
# FEDERAL REGISTER

Vol. 80 Monday,
No. 70 April 13, 2015

Pages 19511–19868

OFFICE OF THE FEDERAL REGISTER

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# Contents

**Federal Register**

Vol. 80, No. 70

Monday, April 13, 2015

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**Separate Parts In This Issue**



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**Reader Aids**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

**3 CFR**

**Proclamations:**

9252.....19867

**7 CFR**

**Proposed Rules:**

1205.....19567

**10 CFR**

**Proposed Rules:**

430.....19569

**14 CFR**

97 (4 documents) .....19511, 19515, 19517, 19520

**Proposed Rules:**

39 (3 documents) .....19570, 19572, 19574

93.....19576

97.....19577

**20 CFR**

404.....19522

416.....19522

**21 CFR**

1020.....19530

**Proposed Rules:**

1020.....19589

**31 CFR**

542.....19532

**32 CFR**

706.....19533

**38 CFR**

38.....19534

**40 CFR**

52 (4 documents) .....19538, 19541, 19544, 19548

81.....19548

**Proposed Rules:**

52 (3 documents) .....19591, 19593

**47 CFR**

1.....19738

8.....19738

20.....19738

**Proposed Rules:**

76.....19594

**49 CFR**

40.....19551

574.....19553

579.....19553

**50 CFR**

660.....19564

**Proposed Rules:**

20.....19852

300.....19611

600.....19611

660.....19611

665.....19611

# Rules and Regulations

Federal Register
Vol. 80, No. 70
Monday, April 13, 2015



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31011; Amdt. No. 3638]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective April 13, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 2015.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 27, 2015.

**John Duncan,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7718 | 02/27/15 | This NOTAM, published in TL 15–09, is hereby rescinded in its entirety. |
| 30-Apr-15 | IA | Decorah | Decorah Muni | 4/0112 | 03/17/15 | RNAV (GPS) RWY 11, Orig-A. |
| 30-Apr-15 | ND | Dickinson | Dickinson—Theodore Roosevelt Rgnl. | 4/0517 | 03/17/15 | RNAV (GPS) RWY 25, Orig. |
| 30-Apr-15 | MN | Duluth | Duluth Intl | 4/0964 | 03/17/15 | ILS OR LOC RWY 27, Amdt 10. |
| 30-Apr-15 | MN | Duluth | Duluth Intl | 4/0967 | 03/17/15 | COPTER ILS OR LOC RWY 27, Amdt 2. |
| 30-Apr-15 | MN | Duluth | Duluth Intl | 4/0969 | 03/17/15 | VOR OR TACAN RWY 3, Amdt 21. |
| 30-Apr-15 | MN | Duluth | Duluth Intl | 4/0971 | 03/17/15 | VOR/DME OR TACAN RWY 21, Amdt 15. |
| 30-Apr-15 | FL | Tallahassee | Tallahassee Rgnl | 4/1324 | 03/16/15 | VOR/DME OR TACAN RWY 36, Amdt 1. |
| 30-Apr-15 | FL | Tallahassee | Tallahassee Rgnl | 4/1325 | 03/16/15 | ILS OR LOC/DME RWY 36, Amdt 25. |
| 30-Apr-15 | FL | Tallahassee | Tallahassee Rgnl | 4/1326 | 03/16/15 | RNAV (GPS) RWY 18, Amdt 1. |
| 30-Apr-15 | FL | Tallahassee | Tallahassee Rgnl | 4/1327 | 03/16/15 | RNAV (GPS) RWY 36, Amdt 1. |
| 30-Apr-15 | FL | Tallahassee | Tallahassee Rgnl | 4/1328 | 03/16/15 | VOR RWY 18, Amdt 12. |
| 30-Apr-15 | OH | Dayton | James M Cox Dayton Intl | 4/9763 | 03/17/15 | RNAV (RNP) Y RWY 6L, Orig. |
| 30-Apr-15 | OH | Dayton | James M Cox Dayton Intl | 4/9819 | 03/17/15 | RNAV (RNP) Y RWY 24R, Orig. |
| 30-Apr-15 | MS | Tupelo | Tupelo Rgnl | 5/0003 | 03/17/15 | NDB RWY 36, Amdt 5. |
| 30-Apr-15 | KY | Murray | Kyle-Oakley Field | 5/0031 | 03/12/15 | LOC RWY 23, Amdt 2. |
| 30-Apr-15 | NE | O'Neill | The O'Neill Muni-John L Baker Field. | 5/0039 | 03/12/15 | RNAV (GPS) RWY 13, Amdt 1A. |
| 30-Apr-15 | NE | O'Neill | The O'Neill Muni-John L Baker Field. | 5/0040 | 03/12/15 | RNAV (GPS) RWY 31, Amdt 1A. |
| 30-Apr-15 | NE | O'Neill | The O'Neill Muni-John L Baker Field. | 5/0041 | 03/12/15 | VOR RWY 13, Amdt 5C. |
| 30-Apr-15 | NE | O'Neill | The O'Neill Muni-John L Baker Field. | 5/0042 | 03/12/15 | VOR RWY 31, Amdt 1B. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/0170 | 03/12/15 | ILS OR LOC RWY 26L, ILS RWY 26L (SA CAT I), ILS RWY 26L (CAT II & III), Amdt 21B. |
| 30-Apr-15 | IL | Champaign/Urbana | University Of Illinois-Willard. | 5/0172 | 03/12/15 | RNAV (GPS) RWY 32R, Orig-A. |
| 30-Apr-15 | GA | Donalsonville | Donalsonville Muni | 5/0261 | 03/12/15 | Takeoff Minimums and (Obstacle) DP, Orig. |
| 30-Apr-15 | GA | Donalsonville | Donalsonville Muni | 5/0262 | 03/12/15 | VOR/DME A, Amdt 3. |
| 30-Apr-15 | IL | Cahokia/St Louis | St Louis Downtown | 5/0302 | 03/12/15 | RNAV (GPS) RWY 30L, Orig-A. |
| 30-Apr-15 | MI | Cheboygan | Cheboygan County | 5/0357 | 03/12/15 | VOR RWY 10, Amdt 9A. |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/0820 | 03/12/15 | ILS OR LOC RWY 12L, ILS RWY 12L (SA CAT I), ILS RWY 12L (CAT II & III), Amdt 10. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/0826 | 03/12/15 | RNAV (GPS) Z RWY 12R, Amdt 3. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/0828 | 03/12/15 | ILS OR LOC RWY 12R, ILS RWY 12R (SA CAT I), ILS RWY 12 R (CAT II & III), Amdt 11. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/0829 | 03/12/15 | ILS V RWY 30R (CONVERGING), Amdt 3. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/1099 | 03/12/15 | LOC RWY 4, Amdt 1A. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/1100 | 03/12/15 | RNAV (GPS) RWY 22, Amdt 1A. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/1101 | 03/12/15 | RNAV (GPS) RWY 4, Amdt 2A. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/1104 | 03/12/15 | LOC RWY 22, Amdt 1A. |
| 30-Apr-15 | MN | Minneapolis | Minneapolis-St Paul Intl/ Wold-Chamberlain. | 5/1105 | 03/12/15 | LOC RWY 17, Amdt 1A. |
| 30-Apr-15 | AK | Deadhorse | Deadhorse | 5/1136 | 03/17/15 | RNAV (RNP) Z RWY 23, Orig-B. |
| 30-Apr-15 | AK | Deadhorse | Deadhorse | 5/1218 | 03/17/15 | RNAV (RNP) Z RWY 5, Orig-B. |
| 30-Apr-15 | GA | Fitzgerald | Fitzgerald Muni | 5/1448 | 03/12/15 | RNAV (GPS) RWY 2, Amdt 1. |
| 30-Apr-15 | TN | Somerville | Fayette County | 5/1454 | 03/12/15 | RNAV (GPS) RWY 19, Amdt 2A. |
| 30-Apr-15 | TN | Somerville | Fayette County | 5/1455 | 03/12/15 | RNAV (GPS) RWY 1, Orig-A. |
| 30-Apr-15 | TN | Somerville | Fayette County | 5/1456 | 03/12/15 | NDB RWY 19, Amdt 1B. |
| 30-Apr-15 | KY | Greenville | Muhlenberg County | 5/1460 | 03/12/15 | RNAV (GPS) RWY 24, Amdt 1A. |
| 30-Apr-15 | KY | Greenville | Muhlenberg County | 5/1461 | 03/12/15 | VOR/DME A, Amdt 5A. |
| 30-Apr-15 | KY | Greenville | Muhlenberg County | 5/1462 | 03/12/15 | RNAV (GPS) RWY 6, Orig. |
| 30-Apr-15 | FL | Marianna | Marianna Muni | 5/1463 | 03/12/15 | NDB–C, Amdt 4A. |
| 30-Apr-15 | FL | Marianna | Marianna Muni | 5/1464 | 03/12/15 | RNAV (GPS) RWY 18, Orig. |
| 30-Apr-15 | FL | Marianna | Marianna Muni | 5/1465 | 03/12/15 | VOR–A, Amdt 12. |
| 30-Apr-15 | FL | Marianna | Marianna Muni | 5/1466 | 03/12/15 | VOR–B, Amdt 5. |
| 30-Apr-15 | NY | Farmingdale | Republic | 5/1479 | 03/12/15 | RNAV (GPS) Y RWY 14, Amdt 2C. |
| 30-Apr-15 | NC | Elizabeth City | Elizabeth City CG Air Station/Rgnl. | 5/2546 | 03/12/15 | ILS OR LOC RWY 10, Amdt 1A. |
| 30-Apr-15 | IL | Champaign/Urbana | University Of Illinois-Willard. | 5/3060 | 03/12/15 | RNAV (GPS) RWY 36, Orig-A. |
| 30-Apr-15 | TX | Houston | Ellington | 5/3252 | 03/17/15 | RNAV (GPS) RWY 4, Amdt 1A. |
| 30-Apr-15 | TX | Houston | Ellington | 5/3285 | 03/17/15 | ILS OR LOC RWY 22, Amdt 3E. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3680 | 03/17/15 | ILS OR LOC RWY 33L, ILS RWY 33L (SA CAT I), ILS RWY 33L (CAT II & III), Amdt 5B. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3681 | 03/18/15 | ILS OR LOC RWY 4R, ILS RWY 4R (SA CAT I), ILS RWY 4R (CAT II & III), Amdt 10A. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3683 | 03/17/15 | ILS OR LOC RWY 22L, Amdt 8A. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3684 | 03/17/15 | ILS OR LOC RWY 27, Amdt 2B. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3685 | 03/17/15 | ILS OR LOC/DME RWY 15R, Amdt 1D. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3686 | 03/17/15 | RNAV (GPS) RWY 4R, Amdt 1A. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3687 | 03/17/15 | RNAV (GPS) RWY 15R, Amdt 1B. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3688 | 03/17/15 | RNAV (GPS) RWY 22L, Amdt 1A. |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3689 | 03/17/15 | RNAV (GPS) RWY 27, Orig-C. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3690 | 03/17/15 | RNAV (GPS) RWY 32, Orig-E. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3691 | 03/17/15 | RNAV (GPS) RWY 33L, Amdt 2A. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3692 | 03/17/15 | VOR/DME RWY 27, Amdt 2D. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3693 | 03/17/15 | VOR/DME RWY 33L, Amdt 2E. |
| 30-Apr-15 | MA | Boston | General Edward Lawrence Logan Intl. | 5/3694 | 03/17/15 | VOR/DME–A, Amdt 1A. |
| 30-Apr-15 | IL | Chicago/Prospect Heights/Wheeling. | Chicago Executive | 5/3702 | 03/17/15 | VOR RWY 16, Orig-D. |
| 30-Apr-15 | IL | Chicago/Prospect Heights/Wheeling. | Chicago Executive | 5/3703 | 03/17/15 | RNAV (GPS) RWY 16, Amdt 1C. |
| 30-Apr-15 | IL | Chicago/Prospect Heights/Wheeling. | Chicago Executive | 5/3704 | 03/17/15 | ILS OR LOC RWY 16, Amdt 2B. |
| 30-Apr-15 | MS | Tupelo | Tupelo Rgnl | 5/3740 | 03/17/15 | VOR/DME RWY 18, Amdt 1. |
| 30-Apr-15 | IL | Sparta | Sparta Community-Hunter Field. | 5/3776 | 03/17/15 | RNAV (GPS) RWY 18, Amdt 1A. |
| 30-Apr-15 | IL | Sparta | Sparta Community-Hunter Field. | 5/3777 | 03/17/15 | RNAV (GPS) RWY 36, Orig. |
| 30-Apr-15 | GA | Winder | Barrow County | 5/3880 | 03/16/15 | VOR/DME–A, Amdt 9D. |
| 30-Apr-15 | GA | Winder | Barrow County | 5/3881 | 03/16/15 | NDB RWY 31, Amdt 9A. |
| 30-Apr-15 | GA | Winder | Barrow County | 5/3882 | 03/16/15 | RNAV (GPS) RWY 31, Amdt 1A. |
| 30-Apr-15 | GA | Winder | Barrow County | 5/3883 | 03/16/15 | ILS OR LOC RWY 31, Orig-B. |
| 30-Apr-15 | GA | Winder | Barrow County | 5/3884 | 03/16/15 | RNAV (GPS) RWY 13, Amdt 1. |
| 30-Apr-15 | GA | Winder | Barrow County | 5/3885 | 03/16/15 | RNAV (GPS) RWY 23, Orig. |
| 30-Apr-15 | AL | Montgomery | Montgomery Rgnl (Dannelly Field). | 5/3898 | 03/16/15 | ILS Y OR LOC RWY 28, Amdt 11A. |
| 30-Apr-15 | AL | Montgomery | Montgomery Rgnl (Dannelly Field). | 5/3899 | 03/16/15 | ILS OR LOC RWY 10, Amdt 23H. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3912 | 03/16/15 | ILS OR LOC RWY 24, Amdt 3. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3913 | 03/16/15 | RNAV (GPS) RWY 33, Orig. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3914 | 03/16/15 | VOR RWY 24, Amdt 2. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3916 | 03/16/15 | VOR RWY 6, Amdt 2. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3918 | 03/16/15 | RNAV (GPS) RWY 24, Amdt 2B. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3924 | 03/16/15 | RNAV (GPS) RWY 15, Orig-A. |
| 30-Apr-15 | MA | Vineyard Haven | Martha's Vineyard | 5/3925 | 03/16/15 | RNAV (GPS) RWY 6, Amdt 1. |
| 30-Apr-15 | VA | Bumpass | Lake Anna | 5/3929 | 03/16/15 | RNAV (GPS) RWY 8, Orig. |
| 30-Apr-15 | VA | Bumpass | Lake Anna | 5/3931 | 03/16/15 | RNAV (GPS) RWY 26, Orig. |
| 30-Apr-15 | AL | Fort Payne | Isbell Field | 5/3934 | 03/16/15 | RNAV (GPS) RWY 4, Orig. |
| 30-Apr-15 | AL | Fort Payne | Isbell Field | 5/3935 | 03/16/15 | RNAV (GPS) Y RWY 22, Orig. |
| 30-Apr-15 | AL | Fort Payne | Isbell Field | 5/3936 | 03/16/15 | RNAV (GPS) Z RWY 22, Orig. |
| 30-Apr-15 | AL | Fort Payne | Isbell Field | 5/3937 | 03/16/15 | NDB–A, Amdt 1. |
| 30-Apr-15 | GA | Fitzgerald | Fitzgerald Muni | 5/3938 | 03/16/15 | LOC/NDB RWY 2, Amdt 1. |
| 30-Apr-15 | NY | Saratoga Springs | Saratoga County | 5/3940 | 03/17/15 | VOR/DME–A, Amdt 1A. |
| 30-Apr-15 | NY | Saratoga Springs | Saratoga County | 5/3941 | 03/17/15 | RNAV (GPS) RWY 23, Amdt 1A. |
| 30-Apr-15 | NY | Ithaca | Ithaca Tompkins Rgnl | 5/3973 | 03/18/15 | RNAV (GPS) Y RWY 14, Orig. |
| 30-Apr-15 | NY | Ithaca | Ithaca Tompkins Rgnl | 5/3974 | 03/18/15 | VOR RWY 14, Amdt 14. |
| 30-Apr-15 | NY | Ithaca | Ithaca Tompkins Rgnl | 5/3975 | 03/18/15 | RNAV (GPS) RWY 32, Orig. |
| 30-Apr-15 | NY | Ithaca | Ithaca Tompkins Rgnl | 5/3976 | 03/18/15 | VOR RWY 32, Amdt 2. |
| 30-Apr-15 | NY | Ithaca | Ithaca Tompkins Rgnl | 5/3977 | 03/18/15 | ILS OR LOC RWY 32, Amdt 6. |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | IL | De Kalb | De Kalb Taylor Muni | 5/4154 | 03/17/15 | Takeoff Minimums and (Obstacle) DP, Amdt 4. |
| 30-Apr-15 | AK | Minchumina | Minchumina | 5/6388 | 03/24/15 | RNAV (GPS) RWY 3, Orig-B. |
| 30-Apr-15 | AK | Minchumina | Minchumina | 5/6392 | 03/24/15 | RNAV (GPS) RWY 21, Orig-B. |
| 30-Apr-15 | NE | Broken Bow | Broken Bow Muni/Keith Glaze Fld. | 5/7325 | 03/04/15 | VOR/DME RWY 32, Orig-B. |
| 30-Apr-15 | NE | Broken Bow | Broken Bow Muni/Keith Glaze Fld. | 5/7326 | 03/04/15 | VOR RWY 14, Amdt 4B. |
| 30-Apr-15 | IN | Bloomington | Monroe County | 5/7722 | 03/04/15 | RNAV (GPS) RWY 6, Orig-A. |
| 30-Apr-15 | NY | Farmingdale | Republic | 5/8164 | 03/12/15 | RNAV (GPS) RWY 1, Amdt 2A. |
| 30-Apr-15 | NY | Farmingdale | Republic | 5/8165 | 03/12/15 | RNAV (GPS) RWY 19, Amdt 2B. |
| 30-Apr-15 | NY | Farmingdale | Republic | 5/8169 | 03/12/15 | RNAV (GPS) RWY 32, Orig. |
| 30-Apr-15 | NY | Farmingdale | Republic | 5/8170 | 03/12/15 | NDB RWY 1, Amdt 14A. |
| 30-Apr-15 | NY | Farmingdale | Republic | 5/8171 | 03/12/15 | ILS OR LOC RWY14, Amdt 8D. |
| 30-Apr-15 | IN | Bedford | Virgil I Grissom Muni | 5/9652 | 03/04/15 | RNAV (GPS) RWY 31, Amdt 1. |
| 30-Apr-15 | IN | Bedford | Virgil I Grissom Muni | 5/9653 | 03/04/15 | RNAV (GPS) RWY 13, Orig. |
| 30-Apr-15 | TX | Houston | Ellington | 5/9655 | 03/17/15 | TACAN RWY 4, Orig. |
| 30-Apr-15 | TX | Houston | Ellington | 5/9673 | 03/17/15 | TACAN RWY 22, Orig-A. |
| 30-Apr-15 | IN | French Lick | French Lick Muni | 5/9708 | 03/05/15 | RNAV (GPS) RWY 8, Amdt 1. |
| 30-Apr-15 | IN | French Lick | French Lick Muni | 5/9709 | 03/05/15 | RNAV (GPS) 26, Orig. |
| 30-Apr-15 | IL | Moline | Quad City Intl | 5/9716 | 03/05/15 | ILS OR LOC RWY 9, Amdt 31. |

[FR Doc. 2015–08116 Filed 4–10–15; 8:45 am]
**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31010; Amdt. No. 3637]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective April 13, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 2015.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5

U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 27, 2015.

**John Duncan,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 30 April 2015**

Monterey, CA, Monterey Rgnl, RNAV (RNP) Z RWY 28L, Amdt 1
Ontario, CA, Ontario Intl, ILS OR LOC RWY 26R, Amdt 4
Sacramento, CA, Sacramento Intl, ILS OR LOC RWY 16L, Amdt 3A
Sacramento, CA, Sacramento Intl, ILS OR LOC RWY 16R, ILS RWY 16R (CAT II), ILS RWY 16R (CAT III), ILS RWY 16R (SA CAT I), Amdt 16A
Sacramento, CA, Sacramento Intl, ILS OR LOC RWY 34L, Amdt 7D
Sacramento, CA, Sacramento Intl, RNAV (GPS) Y RWY 16L, Amdt 2A
Sacramento, CA, Sacramento Intl, RNAV (GPS) Y RWY 16R, Amdt 2A
Sacramento, CA, Sacramento Intl, RNAV (GPS) Y RWY 34L, Amdt 2
Sacramento, CA, Sacramento Intl, RNAV (GPS) Y RWY 34R, Amdt 1
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 16L, Amdt 1
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 16R, Amdt 1
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 34L, Amdt 1
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 34R, Amdt 1
San Francisco, CA, San Francisco Intl, RNAV (RNP) Y RWY 28R, Amdt 3
Plainville, CT, Robertson Field, RNAV (GPS) RWY 2, Orig
Plainville, CT, Robertson Field, Takeoff Minimums and Obstacle DP, Orig
Washington, DC, Ronald Reagan Washington National, LDA Y RWY 19, Orig
Washington, DC, Ronald Reagan Washington National, LDA Z RWY 19, Amdt 3
Washington, DC, Ronald Reagan Washington National, ROSSLYN LDA RWY 19, Amdt 15, CANCELED
Washington, DC, Ronald Reagan Washington National, RNAV (RNP) RWY 19, Amdt 2
Tampa, FL, Tampa Intl, ILS OR LOC RWY 1L, ILS RWY 1L (SA CAT I), ILS RWY 1L (CAT II), ILS RWY 1L (CAT III), Amdt 17
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 5L, ILS RWY 5L (SA CAT I), ILS RWY 5L (CAT II), ILS RWY 5L (CAT III), Amdt 4
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 5R, ILS RWY 5R (SA CAT I), ILS RWY 5R (CAT II), ILS RWY 5R (CAT III), Amdt 6
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 14, Amdt 6
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 23L, Amdt 6
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 23R, Amdt 4
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 32, Amdt 20
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 5L, Amdt 3
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 5R, Amdt 3
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 14, Amdt 3
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 23L, Amdt 3

Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 23R, Amdt 3
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) Y RWY 32, Amdt 3
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 5L, Amdt 1
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 5R, Amdt 1
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 14, Amdt 1
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 23L, Amdt 1
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 23R, Amdt 1
Indianapolis, IN, Indianapolis Intl, RNAV (RNP) Z RWY 32, Amdt 1
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (RNP) Y RWY 30R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (RNP) Y RWY 35, Amdt 2
Jackson, MS, Jackson-Medgar Wiley Evers Intl, RADAR–1, Amdt 12
Canandaigua, NY, Canandaigua, RNAV (GPS) RWY 31, Amdt 1
Dunkirk, NY, Chautauqua County/Dunkirk, VOR RWY 24, Amdt 8
Portland, OR, Portland-Hillsboro, ILS OR LOC RWY 13R, Amdt 10
Portland, OR, Portland-Hillsboro, NDB–B, Amdt 3
Portland, OR, Portland-Hillsboro, RNAV (GPS) RWY 13R, Amdt 2
Portland, OR, Portland-Hillsboro, RNAV (GPS) RWY 31L, Amdt 1
Portland, OR, Portland-Hillsboro, VOR/DME–C, Amdt 1
Salem, OR, McNary Fld, ILS OR LOC Z RWY 31, Amdt 30
Salem, OR, McNary Fld, LOC/DME BC RWY 13, Amdt 8
Salem, OR, McNary Fld, LOC Y RWY 31, Amdt 3
Salem, OR, McNary Fld, RNAV (GPS) RWY 31, Amdt 3
Rapid City, SD, Rapid City Rgnl, RNAV (GPS) RWY 14, Amdt 2B
Spearfish, SD, Black Hills-Clyde Ice Field, NDB–A, Amdt 1A
Spearfish, SD, Black Hills-Clyde Ice Field, RNAV (GPS) RWY 13, Orig-C
Spearfish, SD, Black Hills-Clyde Ice Field, RNAV (GPS) RWY 31, Orig-C
Burlington, VT, Burlington Intl, ILS OR LOC/DME RWY 15, Amdt 24
Burlington, VT, Burlington Intl, RNAV (GPS) RWY 15, Amdt 1
Burlington, VT, Burlington Intl, RNAV (GPS) Z RWY 15, Orig-D, CANCELED
Burlington, VT, Burlington Intl, VOR RWY 1, Amdt 11F, CANCELED
Burlington, VT, Burlington Intl, VOR/DME RWY 1, Orig

[FR Doc. 2015–08114 Filed 4–10–15; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31009; Amdt. No. 3636]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective April 13, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 2015.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 13, 2015.

**John Duncan,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | PA | Doylestown | Doylestown | 5/1883 | 03/02/15 | RNAV (GPS) RWY 23, Amdt 1. |
| 30-Apr-15 | PA | Doylestown | Doylestown | 5/1884 | 03/02/15 | RNAV (GPS) RWY 5, Orig. |
| 30-Apr-15 | WI | Lone Rock | Tri-County Rgnl | 5/2415 | 02/27/15 | VOR A, Amdt 7. |
| 30-Apr-15 | WI | Lone Rock | Tri-County Rgnl | 5/2416 | 02/27/15 | RNAV (GPS) RWY 9, Orig. |
| 30-Apr-15 | WI | Lone Rock | Tri-County Rgnl | 5/2417 | 02/27/15 | LOC RWY 27, Orig. |
| 30-Apr-15 | FL | Tampa | Tampa Intl | 5/3591 | 02/27/15 | RNAV (GPS) Z RWY 19L, Amdt 2C. |
| 30-Apr-15 | FL | Tampa | Tampa Intl | 5/3592 | 02/27/15 | RNAV (RNP) Y RWY 19L, Amdt 1D. |
| 30-Apr-15 | FL | Tampa | Tampa Intl | 5/3593 | 02/27/15 | RNAV (GPS) RWY 28, Amdt 1A. |
| 30-Apr-15 | MO | Columbia | Columbia Rgnl | 5/3800 | 02/27/15 | ILS OR LOC/DME RWY 2, Amdt 15. |
| 30-Apr-15 | WI | Lone Rock | Tri-County Rgnl | 5/5432 | 02/27/15 | RNAV (GPS) RWY 27, Orig. |
| 30-Apr-15 | TX | Dallas | Dallas Love Field | 5/5494 | 02/27/15 | RNAV (GPS) Z RWY 13R, Amdt 1. |
| 30-Apr-15 | TX | Dallas | Dallas Love Field | 5/5495 | 02/27/15 | RNAV (GPS) Y RWY 31L, Amdt 1B. |
| 30-Apr-15 | TN | Clarksville | Outlaw Field | 5/5846 | 02/27/15 | LOC RWY 35, Amdt 5G. |
| 30-Apr-15 | TN | Clarksville | Outlaw Field | 5/5847 | 02/27/15 | RNAV (GPS) RWY 17, Orig-A. |
| 30-Apr-15 | TN | Clarksville | Outlaw Field | 5/5848 | 02/27/15 | RNAV (GPS) RWY 35, Orig-A. |
| 30-Apr-15 | TN | Clarksville | Outlaw Field | 5/5849 | 02/27/15 | VOR RWY 35, Amdt 15F. |
| 30-Apr-15 | KY | Jackson | Julian Carroll | 5/5917 | 02/27/15 | RNAV (GPS) RWY 1, Orig-A. |
| 30-Apr-15 | KY | Jackson | Julian Carroll | 5/5918 | 02/27/15 | VOR/DME RWY 1, Amdt 2. |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | NJ | Mount Holly | South Jersey Rgnl | 5/5999 | 02/27/15 | RNAV (GPS) RWY 26, Amdt 1A. |
| 30-Apr-15 | NJ | Mount Holly | South Jersey Rgnl | 5/6004 | 02/27/15 | RNAV (GPS) RWY 8, Orig-A. |
| 30-Apr-15 | NJ | Mount Holly | South Jersey Rgnl | 5/6005 | 02/27/15 | VOR RWY 26, Amdt 3. |
| 30-Apr-15 | MI | Frankfort | Frankfort Dow Memorial Field. | 5/6376 | 02/27/15 | RNAV (GPS) RWY 15, Amdt 1. |
| 30-Apr-15 | MI | Frankfort | Frankfort Dow Memorial Field. | 5/6377 | 02/27/15 | RNAV (GPS) RWY 33, Amdt 1. |
| 30-Apr-15 | MI | Frankfort | Frankfort Dow Memorial Field. | 5/6378 | 02/27/15 | VOR/DME A, Amdt 1. |
| 30-Apr-15 | FL | Jacksonville | Jacksonville Intl | 5/6411 | 03/04/15 | RNAV (RNP) Y RWY 14, Orig-A. |
| 30-Apr-15 | FL | Jacksonville | Jacksonville Intl | 5/6412 | 03/04/15 | RNAV (RNP) Y RWY 8, Orig-A. |
| 30-Apr-15 | NY | Hamilton | Hamilton Muni | 5/6691 | 03/02/15 | RNAV (GPS) Y RWY 17, Orig. |
| 30-Apr-15 | NY | Hamilton | Hamilton Muni | 5/6692 | 03/02/15 | RNAV (GPS) Z RWY 17, Orig. |
| 30-Apr-15 | NY | Hamilton | Hamilton Muni | 5/6693 | 03/02/15 | VOR–A, Amdt 4. |
| 30-Apr-15 | NY | Hamilton | Hamilton Muni | 5/6694 | 03/02/15 | RNAV (GPS) RWY 35, Orig-A. |
| 30-Apr-15 | MI | Alma | Gratiot Community | 5/6701 | 02/27/15 | VOR/DME RWY 18, Amdt 1. |
| 4/30/2015 | OH | Ashtabula | Northeast Ohio Rgnl | 5/6702 | 02/27/15 | VOR/DME RWY 27, Amdt 6C. |
| 30-Apr-15 | OH | Ashtabula | Northeast Ohio Rgnl | 5/6703 | 02/27/15 | VOR RWY 9, Orig-C. |
| 30-Apr-15 | OH | Ashtabula | Northeast Ohio Rgnl | 5/6704 | 02/27/15 | RNAV (GPS) RWY 9, Orig-B. |
| 30-Apr-15 | OH | Ashtabula | Northeast Ohio Rgnl | 5/6705 | 02/27/05 | RNAV (GPS) RWY 27, Orig-B. |
| 30-Apr-15 | MI | Alma | Gratiot Community | 5/6709 | 02/27/15 | RNAV (GPS) RWY 9, Amdt 1. |
| 30-Apr-15 | AR | Fayetteville | Drake Field | 5/6847 | 02/27/15 | RNAV (GPS) RWY 34, Amdt 1A. |
| 30-Apr-15 | IN | Fort Wayne | Fort Wayne Intl | 5/7035 | 02/27/15 | ILS OR LOC RWY 32, Amdt 30. |
| 30-Apr-15 | IN | Fort Wayne | Fort Wayne Intl | 5/7036 | 02/27/15 | LOC BC RWY 14, Amdt 15A. |
| 30-Apr-15 | IN | Logansport | Logansport/Cass County | 5/7038 | 02/27/15 | RNAV (GPS) RWY 9, Amdt 1. |
| 30-Apr-15 | WI | Friendship (Adams) | Adams County Legion Field. | 5/7707 | 02/27/15 | RNAV (GPS) RWY 33, Orig. |
| 30-Apr-15 | IA | Mount Pleasant | Mount Pleasant Muni | 5/7708 | 02/27/15 | RNAV (GPS) RWY 15, Orig. |
| 30-Apr-15 | IA | Mount Pleasant | Mount Pleasant Muni | 5/7709 | 02/27/15 | RNAV (GPS) RWY 33, Orig. |
| 30-Apr-15 | IA | Mount Pleasant | Mount Pleasant Muni | 5/7710 | 02/27/15 | NDB RWY 33, Amdt 6. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7714 | 02/27/15 | RNAV (RNP) Y RWY 27, Amdt 1A. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7716 | 02/27/15 | GLS RWY 27, Amdt 1. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7717 | 02/27/15 | ILS OR LOC RWY 27, ILS RWY 27 (SA CAT I), ILS RWY 27 (CAT II & III), Amdt 10A. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7718 | 02/27/15 | RNAV (GPS) Z RWY 26R, Amdt 4. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7719 | 02/27/15 | GLS RWY 26R, Amdt 1. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7720 | 02/27/15 | ILS OR LOC RWY 26R, ILS RWY 26R (SA CAT I), ILS RWY 26R (CAT II & III), Amdt 4. |
| 30-Apr-15 | TX | Houston | George Bush Intercontinental/Houston. | 5/7721 | 02/27/15 | GLS RWY 8L, Amdt 1. |
| 30-Apr-15 | IL | Marion | Williamson County Rgnl | 5/7723 | 03/04/15 | VOR RWY 2, Amdt 13C. |
| 30-Apr-15 | IL | Macomb | Macomb Muni | 5/7726 | 03/04/15 | LOC RWY 27, Amdt 3. |
| 30-Apr-15 | IL | Macomb | Macomb Muni | 5/7727 | 03/04/15 | RNAV (GPS) RWY 27, Amdt 1. |
| 30-Apr-15 | MI | Manistee | Manistee Co-Blacker | 5/7728 | 02/27/15 | RNAV (GPS) RWY 28, Orig-A. |
| 30-Apr-15 | MI | Manistee | Manistee Co-Blacker | 5/7729 | 02/27/15 | ILS OR LOC RWY 28, Amdt 1A. |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 30-Apr-15 | MI | Manistee | Manistee Co-Blacker | 5/7730 | 02/27/15 | VOR RWY 28, Amdt 1A. |
| 30-Apr-15 | MI | Manistee | Manistee Co-Blacker | 5/7731 | 02/27/15 | RNAV (GPS) RWY 10, Orig-A. |
| 30-Apr-15 | MI | Manistee | Manistee Co-Blacker | 5/7732 | 02/27/15 | VOR RWY 10, Amdt 1A. |
| 30-Apr-15 | KY | Falmouth | Gene Snyder | 5/8172 | 03/02/15 | RNAV (GPS) RWY 21, Orig-A. |
| 30-Apr-15 | KY | Falmouth | Gene Snyder | 5/8173 | 03/02/15 | VOR–A, Amdt 3. |
| 30-Apr-15 | GA | Atlanta | Dekalb-Peachtree | 5/8180 | 03/02/15 | ILS OR LOC RWY 21L, Amdt 8A. |
| 30-Apr-15 | GA | Atlanta | Dekalb-Peachtree | 5/8181 | 03/02/15 | RNAV (RNP) RWY 3R, Amdt 2. |
| 30-Apr-15 | GA | Atlanta | Dekalb-Peachtree | 5/8182 | 03/02/15 | RNAV (RNP) Z RWY 21L, Amdt 1. |
| 30-Apr-15 | GA | Atlanta | Dekalb-Peachtree | 5/8183 | 03/02/15 | RNAV (GPS) Y RWY 21L, Amdt 1. |
| 30-Apr-15 | GA | Atlanta | Dekalb-Peachtree | 5/8184 | 03/02/15 | VOR/DME RWY 21L, Amdt 2A. |
| 30-Apr-15 | GA | Atlanta | Dekalb-Peachtree | 5/8185 | 03/02/15 | VOR/DME–D, Amdt 1. |
| 30-Apr-15 | TN | Winchester | Winchester Muni | 5/8190 | 03/02/15 | NDB RWY 18, Amdt 6. |
| 30-Apr-15 | TN | Winchester | Winchester Muni | 5/8191 | 03/02/15 | RNAV (GPS) RWY 36, Orig. |
| 30-Apr-15 | TN | Winchester | Winchester Muni | 5/8192 | 03/02/15 | RNAV (GPS) Z RWY 18, Orig. |
| 30-Apr-15 | TN | Winchester | Winchester Muni | 5/8193 | 03/02/15 | RNAV (GPS) Y RWY 18, Orig. |
| 30-Apr-15 | ME | Millinocket | Millinocket Muni | 5/8194 | 02/27/15 | RNAV (GPS) RWY 29, Amdt 1A. |
| 30-Apr-15 | ME | Millinocket | Millinocket Muni | 5/8195 | 03/02/15 | VOR RWY 29, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8357 | 03/02/15 | RNAV (RNP) Z RWY 34R, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8358 | 03/02/15 | RNAV (RNP) Z RWY 35R, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8359 | 03/02/15 | RNAV (RNP) Z RWY 16L, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8360 | 03/02/15 | RNAV (RNP) Z RWY 16R, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8361 | 03/02/15 | RNAV (RNP) Z RWY 17R, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8362 | 03/02/15 | RNAV (RNP) Z RWY 35L, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8363 | 03/02/15 | RNAV (RNP) Z RWY 17L, Orig-A. |
| 30-Apr-15 | CO | Denver | Denver Intl | 5/8364 | 03/02/15 | RNAV (RNP) Z RWY 34L, Orig-A. |
| 30-Apr-15 | IL | Savanna | Tri-Township | 5/9649 | 03/04/15 | RNAV (GPS) RWY 13, Orig-A. |
| 30-Apr-15 | IL | Decatur | Decatur | 5/9650 | 03/04/15 | RNAV (GPS) RWY 12, Orig. |
| 30-Apr-15 | IL | Decatur | Decatur | 5/9651 | 03/04/15 | RNAV (GPS) RWY 30, Amdt 1. |

[FR Doc. 2015–08103 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31008; Amdt. No. 3635]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective April 13, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 2015.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 13, 2015.

**John Duncan,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## Part 97—Standard Instrument Approach Procedures

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 30 April 2015**

Conway, AR, Dennis F Cantrell Field, NDB–A, Amdt 2, CANCELED
Conway, AR, Dennis F Cantrell Field, RNAV (GPS)-B, Orig, CANCELED
Conway, AR, Dennis F Cantrell Field, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELED
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 30R, Amdt 3
Tampa, FL, Tampa Intl, Takeoff Minimums and Obstacle DP, Amdt 10
Peoria, IL, General Downing—Peoria Intl, ILS OR LOC RWY 4, Amdt 2
Peoria, IL, General Downing—Peoria Intl, ILS OR LOC RWY 13, Amdt 6E
Peoria, IL, General Downing—Peoria Intl, ILS OR LOC RWY 31, Amdt 7C
Peoria, IL, General Downing—Peoria Intl, NDB RWY 31, Amdt 15B

Peoria, IL, General Downing—Peoria Intl, RNAV (GPS) RWY 4, Amdt 2
Peoria, IL, General Downing—Peoria Intl, RNAV (GPS) RWY 13, Amdt 1A
Peoria, IL, General Downing—Peoria Intl, RNAV (GPS) RWY 22, Amdt 1B
Peoria, IL, General Downing—Peoria Intl, RNAV (GPS) RWY 31, Amdt 1B
Peoria, IL, General Downing—Peoria Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Peoria, IL, Mount Hawley Auxiliary, VOR–A, Amdt 4, CANCELED
Peoria, IL, Mount Hawley Auxiliary, VOR/DME–A, Orig
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC RWY 13, Amdt 27E
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC RWY 22R, Amdt 11B
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, NDB RWY 31, Amdt 2D
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 31, Amdt 1D
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR RWY 4L, Amdt 17C
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR/DME RWY 22R, Amdt 8H
Gonzales, LA, Louisiana Rgnl, RNAV (GPS) RWY 17, Amdt 1B
Gonzales, LA, Louisiana Rgnl, VOR/DME–A, Amdt 2A
Lafayette, LA, Lafayette Rgnl, RNAV (GPS) RWY 29, Orig-B
New Roads, LA, False River Rgnl, LOC RWY 36, Amdt 1A
New Roads, LA, False River Rgnl, NDB RWY 36, Amdt 2A
New Roads, LA, False River Rgnl, RNAV (GPS) RWY 18, Orig-A
New Roads, LA, False River Rgnl, RNAV (GPS) RWY 36, Orig-A
New Roads, LA, False River Rgnl, VOR/DME–A, Amdt 4A
Detroit, MI, Willow Run, Takeoff Minimums and Obstacle DP, Amdt 10A
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS V RWY 35 (CONVERGING), Amdt 4
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS Z OR LOC RWY 35, ILS Z RWY 35 (SA CAT I), ILS Z RWY 35 (CAT II), ILS Z RWY 35 (CAT III), Amdt 4
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (GPS) Z RWY 30L, Amdt 4
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (GPS) Z RWY 35, Amdt 3
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (RNP) Y RWY 12L, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (RNP) Y RWY 12R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (RNP) Y RWY 30L, Orig
New Ulm, MN, New Ulm Muni, NDB RWY 15, Amdt 2A, CANCELED
New Ulm, MN, New Ulm Muni, NDB RWY 33, Amdt 2A, CANCELED
Steele, MO, Steele Muni, RNAV (GPS) RWY 18, Orig
Steele, MO, Steele Muni, RNAV (GPS) RWY 36, Orig
Steele, MO, Steele Muni, Takeoff Minimums and Obstacle DP, Orig
Billings, MT, Billings Logan Intl, ILS OR LOC/DME RWY 28R, Amdt 2
Billings, MT, Billings Logan Intl, RNAV (GPS) Y RWY 10L, Amdt 3
Billings, MT, Billings Logan Intl, RNAV (GPS) Y RWY 28R, Amdt 3
Billings, MT, Billings Logan Intl, RNAV (RNP) Z RWY 28R, Orig
Kalispell, MT, Glacier Park Intl, ILS OR LOC RWY 2, Amdt 7
Ahoskie, NC, Tri-County, GPS RWY 1, Orig, CANCELED
Ahoskie, NC, Tri-County, GPS RWY 19, Orig, CANCELED
Ahoskie, NC, Tri-County, RNAV (GPS) RWY 1, Orig
Ahoskie, NC, Tri-County, RNAV (GPS) RWY 19, Orig
Ahoskie, NC, Tri-County, VOR/DME–A, Amdt 6
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18L, Amdt 8
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18R, ILS RWY 18R (SA CAT I), ILS RWY 18R (CAT II), ILS RWY 18R (CAT III), Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36L, ILS RWY 36L (SA CAT I), ILS RWY 36L (CAT II), ILS RWY 36L (CAT III), Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36R, ILS RWY 36R (SA CAT I), ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 12
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 18L, Amdt 4
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 18R, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 36L, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 36R, Amdt 4
Smithfield, NC, Johnston Regional, ILS OR LOC Y RWY 3, Orig
Smithfield, NC, Johnston Regional, ILS OR LOC Z RWY 3, Amdt 2
Smithfield, NC, Johnston Regional, NDB RWY 3, Amdt 2
Smithfield, NC, Johnston Regional, RNAV (GPS) RWY 3, Amdt 1
Smithfield, NC, Johnston Regional, RNAV (GPS) RWY 21, Amdt 1
Smithfield, NC, Johnston Regional, Takeoff Minimums and Obstacle DP, Amdt 4
Curtis, NE., Curtis Muni, RNAV (GPS) RWY 12, Orig
Curtis, NE., Curtis Muni, RNAV (GPS) RWY 30, Orig
Curtis, NE., Curtis Muni, Takeoff Minimums and Obstacle DP, Orig
Oklahoma City, OK, Wiley Post, RNAV (GPS) RWY 17L, Amdt 2A
Houston, TX, Houston Executive, RNAV (GPS) RWY 18, Orig-A
Kingsville, TX, Kleberg County, NDB RWY 13, Amdt 6, CANCELED
New Braunfels, TX, New Braunfels Rgnl, RNAV (GPS) RWY 13, Amdt 1
New Braunfels, TX, New Braunfels Rgnl, RNAV (GPS) RWY 31, Amdt 1
Price, UT, Carbon County Rgnl/Buck Davis Field, RNAV (GPS) RWY 1, Amdt 2
Siren, WI, Burnett County, RNAV (GPS) RWY 5, Orig
Siren, WI, Burnett County, RNAV (GPS) RWY 14, Orig
Siren, WI, Burnett County, RNAV (GPS) RWY 23, Orig
Siren, WI, Burnett County, RNAV (GPS) RWY 32, Orig
Siren, WI, Burnett County, VOR RWY 5, Amdt 3

[FR Doc. 2015–08113 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Docket No. SSA–2011–0081]**

**RIN 0960–AG28**

### Revised Listings for Growth Disorders and Weight Loss in Children

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts, with one change, the rule for evaluating growth disorders in children we proposed in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on May 22, 2013. Several body systems in the Listing of Impairments (listings) contain listings for children based on impairment of linear growth or weight loss. We are replacing those listings with new listings for low birth weight (LBW) and failure to thrive; a new listing for genitourinary impairments; and revised listings for growth failure in combination with a respiratory, cardiovascular, digestive, or immune system disorder. These revisions reflect our program experience, advances in medical knowledge, and comments we received from medical experts and the public.

**DATES:** This rule is effective June 12, 2015.

**FOR FURTHER INFORMATION CONTACT:** Cheryl A. Williams, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

We are adopting, as final, the rule for evaluating growth disorders in children we proposed in an NPRM published in the **Federal Register** on May 22, 2013 at 78 FR 30249. We made one addition to this rule as the result of a public comment suggesting we provide guidance for evaluating LBW in children born at less than 32 weeks gestation or weighing less than 1325 grams. We revised the table in listing 100.04B to include 32 weeks in the Gestational Age column because we believe that this guidance is appropriate.

The preamble to the NPRM discussed the remaining changes from our current rule and our reasons for proposing those changes. To the extent that we are adopting the proposed rule as published, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM, available at *http://www.regulations.gov* under docket number SSA–2011–0081.

## Why are we revising the listings for evaluating growth disorders in children?

We are revising the listings for evaluating growth disorders in children to update the medical criteria, provide more information on how we evaluate growth disorders, reflect our program experience, and address adjudicator questions.

## Public Comments on the NPRM

In the NPRM, we provided the public with a 60-day comment period, which ended on July 22, 2013. We received six comments. The commenters included state agencies that make disability determinations for us, the National Association of Disability Examiners, medical organizations, such as the American Academy of Pediatrics, and advocacy groups, such as the Endocrine Society. We carefully considered all of the comments, summarized the commenters' views, and responded to all of the significant issues that were within the scope of this rule. Some commenters noted provisions with which they agreed and did not make suggestions for changes in those provisions. We did not summarize or respond to those comments.

### Listing 100.04 Low Birth Weight in Infants From Birth to Attainment of Age 1

#### Low Birth Weight

*Comment:* One commenter suggested that we provide guidance in the listings at 100.04A or 100.04B, or in the introductory text at 100.00, on diaries used to schedule continuing disability reviews (CDR) for LBW infants. The commenter believes that, while this guidance is already in our internal operating instructions, providing it in the regulations would reduce the number of incorrect diaries being set for LBW cases.

*Response:* We did not adopt this comment. In 100.00B, we include a reference to our rule for CDRs for LBW cases at § 416.990(b)(11). Additionally, the Act requires, with one exception, that we perform a CDR not later than 12 months after the birth of an infant whose LBW is a contributing factor material to the determination that the infant is disabled. We will continue to provide guidance on diaries for LBW cases and cases involving other disabling impairments in our internal operating instructions. We do not believe it is necessary to repeat this guidance in the regulation.

*Comment:* One commenter expressed concern that listing 100.04 suggests that LBW is a disability. The commenter felt that it should be clear that weight is ''a proxy measure for prematurity, dysphagia, and other functional impairments that are associated with disabilities, rather than weight as a disability itself.'' The commenter did not provide suggested language to include in our rule.

*Response:* We did not adopt this comment. We agree that, for the purposes of listing 100.04, weight is a proxy measure for disability in infants from birth to the attainment of age 1. However, we do not believe that providing additional guidance is necessary for the clarity of our rule. As we noted in the preamble to the proposed rule, we based listing 100.04 on sections 416.926a(m)(6) and (m)(7) of our functional equivalence rule.[1] Our adjudicators have over 20 years of experience evaluating claims filed on behalf of children based on LBW under our functional equivalence rule. In our experience applying this rule, we have not found that the type of guidance the commenter suggested is necessary in order to apply the rule properly.

#### Evaluating Infants Born at 33 Weeks Weighing Less Than 1325 Grams

*Comment:* One commenter suggested that we add guidance for evaluating infants who weigh between 1200 grams and 1325 grams, and who are born at gestational ages of 32 weeks or less.

*Response:* We partially adopted this comment. We agree that it is appropriate to provide guidance for evaluating LBW in infants who are born at 32 weeks gestational age. We revised the table in 100.04B to provide a birth weight value of 1250 grams or less for the gestational age of 32 weeks. However, we did not provide birth weight values for gestational ages less than 32 weeks. The birth weight values that we would provide for infants born at less than 32 weeks would be less than 1200 grams and, thus, the birth weight would meet the criterion in 100.04A.

### Listing 100.05 Failure To Thrive in Children From Birth to Attainment of Age 3

#### Growth Measurements

*Comment:* One commenter recommended including growth curves in 100.05A to make administrative processing for pediatricians easier. Another commenter suggested that we make determinations based on growth measurements alone without requiring a diagnosis of developmental delay.

*Response:* We did not adopt these comments. In 100.05A, we require three weight-for-length measurements or body mass index (BMI)-for-age measurements that are within a 12-month period, at least 60-days apart, and less than the third percentile on the appropriate table in listing 105.08B.2. The adjudicator making the disability determination uses the information from growth curves provided by the child's pediatrician to find the corresponding values on the tables provided. We do not believe it is necessary to include the growth curves in the listing because our adjudicators use the listing, rather than the pediatrician who evaluates a child.

As we stated in the NPRM, our program experience has shown that growth failure alone is not disabling (78 FR at 30251). To meet the severity requirements for listing 100.05B, the child must have growth failure with a developmental delay of the appropriate severity required by the listing. Children with growth failure without developmental delay may be evaluated in the appropriate body system of the underlying condition causing the growth failure.

[1] 78 FR at 30350.

**Developmental Testing**

*Comment:* One commenter questioned the requirement for two narrative developmental reports in 100.05C and the requirement that these two reports be at least 120 days apart. This commenter suggested that, if we keep the requirement for two reports, we should require a shorter period of either 30 or 60 days between them. Another commenter also expressed concern about the requirements for the evidence of developmental delay. This commenter was concerned about the availability of these records from providers.

*Response:* We did not adopt these comments. In 100.05C, we require two narrative developmental reports when a report of a standardized developmental assessment required by 100.05B is not available. As we explained in the NPRM, abnormal findings noted on repeated examinations, and information in narrative developmental reports, that may include the results of developmental screening tests, can identify a child who is not developing or achieving skills within expected timeframes.[2]

We do not believe that 30 or 60 days is enough time for these kinds of changes to appear on testing. We believe that 120 days is an appropriate period for developmental testing to be performed and to allow for any changes in development to show on testing.

While we understand the commenter's concern about the availability of evidence, we believe that, for the children whose impairments we evaluate under listing 100.05, evidence generally will be available from providers because these children are likely to be identified, and subsequently treated because of their identification, by early intervention programs.

*Comment:* One commenter noted that most early intervention programs use ''a 25 percent delay criteria as opposed to the two-thirds criteria'' required in 100.05C. However, the commenter did not provide any suggestions for changing the criterion.

*Response:* We did not adopt this comment. We recognize that early intervention programs often use a 25 percent delay criterion to determine eligibility for intervention services and to identify the needed services. In contrast, we evaluate a child's delay to determine whether the underlying impairment is disabling because it results in ''marked and severe functional limitations.'' An impairment results in ''marked and severe functional limitations'' only if it meets, medically equals, or functionally equals the listings. An impairment is of listing-level severity if it results in ''marked'' limitations in two domains of functioning or an ''extreme'' limitation in one domain.[3] The level of delay that we require in 100.05C is consistent with our definition of ''marked limitation'' in § 416.926a(e)(2)(ii).

*Comment:* One commenter expressed concern about acceptable timeframes for performing developmental testing in relation to disability determinations stated in 100.05B and 100.05C. The commenter suggested that the testing to establish the child's current level of development be performed within 6 months of adjudication.

*Response:* We partially adopted this comment. We agree that evidence about a child's development must be recent and current in relation to a disability determination, and we have revised listings 100.05B and 100.05C2 to clarify this requirement. However, the facts in a specific case determine whether the evidence is current. Determining factors include, but are not limited to, the age of the child, the amount of delay, and the developmental trajectory documented over time. We are not setting specific timeframes for when developmental testing must be performed, but we are specifying that the evidence must reflect the child's current development.

**Linear Growth**

*Comment:* One commenter agreed with our use of weight-for-length and BMI-for-age charts to evaluate growth failure, rather than of linear (height or length) growth charts. The commenter expressed concern, however, that an underlying condition could cause a child to have such profound growth failure that BMI for the child's age would become normal, despite his or her significant growth failure.

*Response:* We did not adopt this comment. We understand the commenter's concerns that some children may have underlying conditions that cause linear growth impairments while their BMI-for-age measurements are normal. After attainment of age 2, most children without an underlying medical disorder follow a growth trajectory that remains fairly constant during childhood.

Our adjudicative experience has shown that a declining linear growth rate is not always indicative of a disabling condition. Short stature, length, or height below the third percentile, in and of itself, is not a medically determinable impairment, although it can be the result of a medically determinable impairment. We will evaluate children with growth failure that does not meet the requirements of listings 100.04 and 100.05 and is associated with a known medically determinable impairment under the affected body system.

*Comment:* One commenter was concerned that, while the majority of children over the age of 3 with growth failure have signs and symptoms of an underlying disorder in the respiratory, cardiovascular, digestive, genitourinary, or immune body system, some children over the age of 3 will not. This commenter suggested that we include exceptions for conditions, such as Turner syndrome (female hypogonadism) and acquired growth hormone deficiency, where growth failure may be a significant component of the disease process.

*Response:* We did not adopt this comment. After a child attains age 3, we will evaluate his or her impairment under the affected body system. The two examples provided by the commenter are endocrine disorders. Although these two disorders are not listed impairments for children, they may rise to listing-level severity because of their effects in other body systems. As the commenter explained, children with Turner syndrome may experience complications, such as heart disease, to a degree that is disabling. We would evaluate the complications under the affected body system.

**Listing 103.06 Growth Failure Due to Any Chronic Respiratory Disorder**

*Comment:* Two commenters were concerned with the requirement for oxygen supplementation in 103.06A. The commenters noted that some respiratory disorders, such as asthma, bronchiectasis, and cystic fibrosis, could result in listing-level growth failure without requiring oxygen supplementation.

*Response:* We did not adopt these comments. We agree with the commenters that some respiratory disorders could result in listing-level growth failure without requiring oxygen supplementation; however, we did not revise 103.06 as a result. We use other listings, such as 103.02, 103.03, and 103.04, in the respiratory body system to evaluate these disorders.[4] We believe that these respiratory listings, and our functional equivalence rule for evaluating disability in children,

[2] 78 FR at 30251.

[3] See 20 CFR 416.926a(a).

[4] See 20 CFR part 404, subpart P, Appendix 1.

adequately address the disorders referred to by the commenters.[5]

**What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?**

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.[6]

**When will we use this final rule?**

We will begin to use this final rule on its effective date. We will continue to use the current listings until the date this final rule becomes effective. We will apply the final rule to new applications filed on or after the effective date of the final rule and to claims that are pending on or after the effective date.[7]

**How long will this final rule be effective?**

This final rule will remain in effect for 5 years after the date it becomes effective, unless we extend it or revise and issue it again.

**Regulatory Procedures**

*Executive Order 12866, as Supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed this final rule.

*Regulatory Flexibility Act*

We certify that this final rule would not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

*20 CFR Part 416*

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 as follows:
■ a. Revise item 1 of the introductory text before part A of appendix 1.
■ b. Amend part B by revising the body system name for section 100.00 in the table of contents.
■ c. Revise sections 100.00 and 100.01 of part B.
■ d. Remove sections 100.02 and 100.03 of part B.
■ e. Add sections 100.04 and 100.05 of part B
■ f. Add section 103.00F of part B.
■ g. Add listing 103.06 of part B.
■ h. Revise section 104.00C2b introductory text of part B.
■ i. Revise section 104.00C2b(ii) of part B.
■ j. Add section 104.00C3 of part B.
■ k. Revise listing 104.02C of part B.
■ l. Revise section 105.00G of part B.
■ m. Revise listing 105.08 of part B.
■ n. Redesignate section 106.00C5 of part B as 106.00C6 and add new section 106.00C5.
■ o. Add listing 106.08 of part B.
■ p. Add section 114.00F4d of part B.
■ q. Revise listing 114.08H of part B.

The revisions and additions read as follows:

**APPENDIX 1 TO SUBPART P OF PART 404—LISTING OF IMPAIRMENTS**

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1. Low Birth Weight and Failure to Thrive (100.00): June 12, 2020.

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Part B

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100.00 Low Birth Weight and Failure to Thrive.

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100.00 LOW BIRTH WEIGHT AND FAILURE TO THRIVE

A. *What conditions do we evaluate under these listings?* We evaluate low birth weight (LBW) in infants from birth to attainment of age 1 and failure to thrive (FTT) in infants and toddlers from birth to attainment of age 3.

B. *How do we evaluate disability based on LBW under 100.04?* In 100.04A and 100.04B, we use an infant's birth weight as documented by an original or certified copy of the infant's birth certificate or by a medical record signed by a physician. *Birth weight* means the first weight recorded after birth. In 100.04B, *gestational age* is the infant's age based on the date of conception as recorded in the medical record. If the infant's impairment meets the requirements for listing 100.04A or 100.04B, we will follow the rule in § 416.990(b)(11) of this chapter.

C. *How do we evaluate disability based on FTT under 100.05?*

1. *General.* We establish FTT with or without a known cause when we have documentation of an infant's or a toddler's growth failure and developmental delay from an acceptable medical source(s) as defined in § 416.913(a) of this chapter. We require documentation of growth measurements in 100.05A and developmental delay described in 100.05B or 100.05C within the same consecutive 12-month period. The dates of developmental testing and reports may be different from the dates of growth measurements. After the attainment of age 3, we evaluate growth failure under the affected body system(s).

2. *Growth failure.* Under 100.05A, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile. The child does not need to have a digestive disorder for purposes of 100.05.

a. For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

b. For children age 2 to attainment of age 3, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

[5] See 20 CFR 416.924a and 416.926a.

[6] 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1).

[7] This means that we will use this final rule on and after its effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rule that was in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the effective date of this final rule, we will apply this final rule to the entire period at issue in the decision we make after the court's remand.

c. BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

d. *Growth measurements.* The weight-for-length measurements for children from birth to the attainment of age 2 and BMI-for-age measurements for children age 2 to attainment of age 3 that are required for this listing must be obtained within a 12-month period and at least 60 days apart. If a child attains age 2 during the evaluation period, additional measurements are not needed. Any measurements taken before the child attains age 2 can be used to evaluate the impairment under the appropriate listing for the child's age. If the child attains age 3 during the evaluation period, the measurements can be used to evaluate the impairment in the affected body system.

3. *Developmental delay.*

a. Under 100.05B and C, we use reports from acceptable medical sources to establish delay in a child's development.

b. Under 100.05B, we document the severity of developmental delay with results from a standardized developmental assessment, which compares a child's level of development to the level typically expected for his or her chronological age. If the child was born prematurely, we may use the corrected chronological age (CCA) for comparison. (See § 416.924b(b) of this chapter.) CCA is the chronological age adjusted by a period of gestational prematurity. CCA = (chronological age)—(number of weeks premature). Acceptable medical sources or early intervention specialists, physical or occupational therapists, and other sources may conduct standardized developmental assessments and developmental screenings. The results of these tests and screenings must be accompanied by a statement or records from an acceptable medical source who established the child has a developmental delay.

c. Under 100.05C, when there are no results from a standardized developmental assessment in the case record, we need narrative developmental reports from the child's medical sources in sufficient detail to assess the severity of his or her developmental delay. A narrative developmental report is based on clinical observations, progress notes, and well-baby check-ups. To meet the requirements for 100.05C, the report must include: The child's developmental history; examination findings (with abnormal findings noted on repeated examinations); and an overall assessment of the child's development (that is, more than one or two isolated skills) by the medical source. Some narrative developmental reports may include results from developmental screening tests, which can identify a child who is not developing or achieving skills within expected timeframes. Although medical sources may refer to screening test results as supporting evidence in the narrative developmental report, screening test results alone cannot establish a diagnosis or the severity of developmental delay.

D. *How do we evaluate disorders that do not meet one of these listings?*

1. We may find infants disabled due to other disorders when their birth weights are greater than 1200 grams but less than 2000 grams and their weight and gestational age do not meet listing 100.04. The most common disorders of prematurity and LBW include retinopathy of prematurity (ROP), chronic lung disease of infancy (CLD, previously known as bronchopulmonary dysplasia, or BPD), intraventricular hemorrhage (IVH), necrotizing enterocolitis (NEC), and periventricular leukomalacia (PVL). Other disorders include poor nutrition and growth failure, hearing disorders, seizure disorders, cerebral palsy, and developmental disorders. We evaluate these disorders under the affected body systems.

2. We may evaluate infants and toddlers with growth failure that is associated with a known medical disorder under the body system of that medical disorder, for example, the respiratory or digestive body systems.

3. If an infant or toddler has a severe medically determinable impairment(s) that does not meet the criteria of any listing, we must also consider whether the child has an impairment(s) that medically equals a listing (see § 416.926 of this chapter). If the child's impairment(s) does not meet or medically equal a listing, we will determine whether the child's impairment(s) functionally equals the listings (see § 416.926a of this chapter) considering the factors in § 416.924a of this chapter. We use the rule in § 416.994a of this chapter when we decide whether a child continues to be disabled.

100.01 Category of Impairments, Low Birth Weight and Failure to Thrive

100.04 *Low birth weight in infants from birth to attainment of age 1.*

A. Birth weight (see 100.00B) of less than 1200 grams.

OR

B. The following gestational age and birth weight:

| Gestational age (in weeks) | Birth weight |
|---|---|
| 37–40 ..... | 2000 grams or less. |
| 36 ..... | 1875 grams or less. |
| 35 ..... | 1700 grams or less. |
| 34 ..... | 1500 grams or less. |
| 33 ..... | 1325 grams or less. |
| 32 ..... | 1250 grams or less. |

100.05 *Failure to thrive in children from birth to attainment of age 3* (see 100.00C), documented by A and B, or A and C.

A. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table in listing 105.08B1; or

2. *For children age 2 to attainment of age 3,* three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table in listing 105.08B2.

AND

B. Developmental delay (see 100.00C1 and C3), established by an acceptable medical source and documented by findings from one current report of a standardized developmental assessment (see 100.00C3b) that:

1. Shows development not more than two-thirds of the level typically expected for the child's age; or

2. Results in a valid score that is at least two standard deviations below the mean.

OR

C. Developmental delay (see 100.00C3), established by an acceptable medical source and documented by findings from two narrative developmental reports (see 100.00C3c) that:

1. Are dated at least 120 days apart (see 100.00C1); and

2. Indicate current development not more than two-thirds of the level typically expected for the child's age.

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103.00 RESPIRATORY SYSTEM

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F. *How do we evaluate growth failure due to any chronic respiratory disorder?*

1. To evaluate growth failure due to any chronic respiratory disorder, we require documentation of the oxygen supplementation described in 103.06A and the growth measurements in 103.06B within the same consecutive 12-month period. The dates of oxygen supplementation may be different from the dates of growth measurements.

2. Under 103.06B, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

a. For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

b. For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

c. BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

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103.06 *Growth failure due to any chronic respiratory disorder* (see 103.00F), documented by:

A. Hypoxemia with the need for at least 1.0 L/min of oxygen supplementation for at least 4 hours per day and for at least 90 consecutive days.

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18,* three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

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104.00 CARDIOVASCULAR SYSTEM

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C. *Evaluating Chronic Heart Failure*

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2. *What evidence of CHF do we need?*

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b. To establish that you have *chronic* heart failure, we require that your medical history and physical examination describe characteristic symptoms and signs of pulmonary or systemic congestion or of limited cardiac output associated with abnormal findings on appropriate medically acceptable imaging. When a remediable factor, such as arrhythmia, triggers an acute episode of heart failure, you may experience restored cardiac function, and a chronic impairment may not be present.

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(ii) During infancy, other manifestations of chronic heart failure may include repeated lower respiratory tract infections.

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3. *How do we evaluate growth failure due to CHF?*

a. To evaluate growth failure due to CHF, we require documentation of the clinical findings of CHF described in 104.00C2 and the growth measurements in 104.02C within the same consecutive 12-month period. The dates of clinical findings may be different from the dates of growth measurements.

b. Under 104.02C, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

(i) For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

(ii) For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

(iii) BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

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104.02 * * *

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C. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18,* three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

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105.00 DIGESTIVE SYSTEM

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G. *How do we evaluate growth failure due to any digestive disorder?*

1. To evaluate growth failure due to any digestive disorder, we require documentation of the laboratory findings of chronic nutritional deficiency described in 105.08A and the growth measurements in 105.08B within the same consecutive 12-month period. The dates of laboratory findings may be different from the dates of growth measurements.

2. Under 105.08B, we evaluate a child's growth failure by using the appropriate table for age and gender.

a. For children from birth to attainment of age 2, we use the weight-for-length table (see Table I or Table II).

b. For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table (see Tables III or IV).

c. BMI is the ratio of a child's weight to the square of the child's height. We calculate BMI using one of the following formulas:

*English Formula*

BMI = [Weight in Pounds/(Height in Inches × Height in Inches)] × 703

*Metric Formulas*

BMI = Weight in Kilograms/(Height in Meters × Height in Meters)

BMI = [Weight in Kilograms/(Height in Centimeters × Height in Centimeters)] × 10,000

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105.08 *Growth failure due to any digestive disorder* (see 105.00G), documented by A and B:

A. Chronic nutritional deficiency present on at least two evaluations at least 60 days apart within a consecutive 12-month period documented by one of the following:

1. Anemia with hemoglobin less than 10.0 g/dL; or

2. Serum albumin of 3.0 g/dL or less;

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on Table I or Table II; or

TABLE I—MALES BIRTH TO ATTAINMENT OF AGE 2

[Third Percentile Values for Weight-for-Length]

| Length (centimeters) | Weight (kilograms) | Length (centimeters) | Weight (kilograms) | Length (centimeters) | Weight (kilograms) |
|---|---|---|---|---|---|
| 45.0 | 1.597 | 64.5 | 6.132 | 84.5 | 10.301 |
| 45.5 | 1.703 | 65.5 | 6.359 | 85.5 | 10.499 |
| 46.5 | 1.919 | 66.5 | 6.584 | 86.5 | 10.696 |
| 47.5 | 2.139 | 67.5 | 6.807 | 87.5 | 10.895 |
| 48.5 | 2.364 | 68.5 | 7.027 | 88.5 | 11.095 |
| 49.5 | 2.592 | 69.5 | 7.245 | 89.5 | 11.296 |
| 50.5 | 2.824 | 70.5 | 7.461 | 90.5 | 11.498 |
| 51.5 | 3.058 | 71.5 | 7.674 | 91.5 | 11.703 |
| 52.5 | 3.294 | 72.5 | 7.885 | 92.5 | 11.910 |
| 53.5 | 3.532 | 73.5 | 8.094 | 93.5 | 12.119 |
| 54.5 | 3.771 | 74.5 | 8.301 | 94.5 | 12.331 |
| 55.5 | 4.010 | 75.5 | 8.507 | 95.5 | 12.546 |
| 56.5 | 4.250 | 76.5 | 8.710 | 96.5 | 12.764 |
| 57.5 | 4.489 | 77.5 | 8.913 | 97.5 | 12.987 |
| 58.5 | 4.728 | 78.5 | 9.113 | 98.5 | 13.213 |
| 59.5 | 4.966 | 79.5 | 9.313 | 99.5 | 13.443 |
| 60.5 | 5.203 | 80.5 | 9.512 | 100.5 | 13.678 |
| 61.5 | 5.438 | 81.5 | 9.710 | 101.5 | 13.918 |
| 62.5 | 5.671 | 82.5 | 9.907 | 102.5 | 14.163 |
| 63.5 | 5.903 | 83.5 | 10.104 | 103.5 | 14.413 |

TABLE II—FEMALES BIRTH TO ATTAINMENT OF AGE 2

[Third Percentile Values for Weight-for-Length]

| Length (centimeters) | Weight (kilograms) | Length (centimeters) | Weight (kilograms) | Length (centimeters) | Weight (kilograms) |
|---|---|---|---|---|---|
| 45.0 | 1.613 | 64.5 | 5.985 | 84.5 | 10.071 |
| 45.5 | 1.724 | 65.5 | 6.200 | 85.5 | 10.270 |
| 46.5 | 1.946 | 66.5 | 6.413 | 86.5 | 10.469 |
| 47.5 | 2.171 | 67.5 | 6.625 | 87.5 | 10.670 |
| 48.5 | 2.397 | 68.5 | 6.836 | 88.5 | 10.871 |
| 49.5 | 2.624 | 69.5 | 7.046 | 89.5 | 11.074 |
| 50.5 | 2.852 | 70.5 | 7.254 | 90.5 | 11.278 |
| 51.5 | 3.081 | 71.5 | 7.461 | 91.5 | 11.484 |
| 52.5 | 3.310 | 72.5 | 7.667 | 92.5 | 11.691 |
| 53.5 | 3.538 | 73.5 | 7.871 | 93.5 | 11.901 |
| 54.5 | 3.767 | 74.5 | 8.075 | 94.5 | 12.112 |
| 55.5 | 3.994 | 75.5 | 8.277 | 95.5 | 12.326 |
| 56.5 | 4.220 | 76.5 | 8.479 | 96.5 | 12.541 |
| 57.5 | 4.445 | 77.5 | 8.679 | 97.5 | 12.760 |
| 58.5 | 4.892 | 78.5 | 8.879 | 98.5 | 12.981 |
| 59.5 | 5.113 | 79.5 | 9.078 | 99.5 | 13.205 |
| 60.5 | 5.333 | 80.5 | 9.277 | 100.5 | 13.431 |
| 61.5 | 5.552 | 81.5 | 9.476 | 101.5 | 13.661 |
| 62.5 | 5.769 | 82.5 | 9.674 | 102.5 | 13.895 |
| 63.5 | 5.769 | 83.5 | 9.872 | 103.5 | 14.132 |

2. *For children age 2 to attainment of age 18,* three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on Table III or Table IV.

TABLE III—MALES AGE 2 TO ATTAINMENT OF AGE 18

[Third Percentile Values for BMI-for-Age]

| Age (yrs. and mos.) | BMI | Age (yrs. and mos.) | BMI | Age (yrs. and mos.) | BMI |
|---|---|---|---|---|---|
| 2.0 to 2.1 | 14.5 | 10.11 to 11.2 | 14.3 | 14.9 to 14.10 | 16.1 |
| 2.2 to 2.4 | 14.4 | 11.3 to 11.5 | 14.4 | 14.11 to 15.0 | 16.2 |
| 2.5 to 2.7 | 14.3 | 11.6 to 11.8 | 14.5 | 15.1 to 15.3 | 16.3 |
| 2.8 to 2.11 | 14.2 | 11.9 to 11.11 | 14.6 | 15.4 to 15.5 | 16.4 |
| 3.0 to 3.2 | 14.1 | 12.0 to 12.1 | 14.7 | 15.6 to 15.7 | 16.5 |
| 3.3 to 3.6 | 14.0 | 12.2 to 12.4 | 14.8 | 15.8 to 15.9 | 16.6 |
| 3.7 to 3.11 | 13.9 | 12.5 to 12.7 | 14.9 | 15.10 to 15.11 | 16.7 |
| 4.0 to 4.5 | 13.8 | 12.8 to 12.9 | 15.0 | 16.0 to 16.1 | 16.8 |
| 4.6 to 5.0 | 13.7 | 12.10 to 13.0 | 15.1 | 16.2 to 16.3 | 16.9 |
| 5.1 to 6.0 | 13.6 | 13.1 to 13.2 | 15.2 | 16.4 to 16.5 | 17.0 |
| 6.1 to 7.6 | 13.5 | 13.3 to 13.4 | 15.3 | 16.6 to 16.8 | 17.1 |
| 7.7 to 8.6 | 13.6 | 13.5 to 13.7 | 15.4 | 16.9 to 16.10 | 17.2 |
| 8.7 to 9.1 | 13.7 | 13.8 to 13.9 | 15.5 | 16.11 to 17.0 | 17.3 |
| 9.2 to 9.6 | 13.8 | 13.10 to 13.11 | 15.6 | 17.1 to 17.2 | 17.4 |
| 9.7 to 9.11 | 13.9 | 14.0 to 14.1 | 15.7 | 17.3 to 17.5 | 17.5 |
| 10.0 to 10.3 | 14.0 | 14.2 to 14.4 | 15.8 | 17.6 to 17.7 | 17.6 |
| 10.4 to 10.7 | 14.1 | 14.5 to 14.6 | 15.9 | 17.8 to 17.9 | 17.7 |
| 10.8 to 10.10 | 14.2 | 14.7 to 14.8 | 16.0 | 17.10 to 17.11 | 17.8 |

TABLE IV—FEMALES AGE 2 TO ATTAINMENT OF AGE 18

[Third Percentile Values for BMI-for-Age]

| Age (yrs. and mos.) | BMI | Age (yrs. and mos.) | BMI | Age (yrs. and mos.) | BMI |
|---|---|---|---|---|---|
| 2.0 to 2.2 | 14.1 | 10.8 to 10.10 | 14.0 | 14.3 to 14.5 | 15.6 |
| 2.3 to 2.6 | 14.0 | 10.11 to 11.2 | 14.1 | 14.6 to 14.7 | 15.7 |
| 2.7 to 2.10 | 13.9 | 11.3 to 11.5 | 14.2 | 14.8 to 14.9 | 15.8 |
| 2.11 to 3.2 | 13.8 | 11.6 to 11.7 | 14.3 | 14.10 to 15.0 | 15.9 |
| 3.3 to 3.6 | 13.7 | 11.8 to 11.10 | 14.4 | 15.1 to 15.2 | 16.0 |
| 3.7 to 3.11 | 13.6 | 11.11 to 12.1 | 14.5 | 15.3 to 15.5 | 16.1 |
| 4.0 to 4.4 | 13.5 | 12.2 to 12.4 | 14.6 | 15.6 to 15.7 | 16.2 |
| 4.5 to 4.11 | 13.4 | 12.5 to 12.6 | 14.7 | 15.8 to 15.10 | 16.3 |
| 5.0 to 5.9 | 13.3 | 12.7 to 12.9 | 14.8 | 15.11 to 16.0 | 16.4 |
| 5.10 to 7.6 | 13.2 | 12.10 to 12.11 | 14.9 | 16.1 to 16.3 | 16.5 |

TABLE IV—FEMALES AGE 2 TO ATTAINMENT OF AGE 18—Continued

[Third Percentile Values for BMI-for-Age]

| Age (yrs. and mos.) | BMI | Age (yrs. and mos.) | BMI | Age (yrs. and mos.) | BMI |
|---|---|---|---|---|---|
| 7.7 to 8.4 | 13.3 | 13.0 to 13.2 | 15.0 | 16.4 to 16.6 | 16.6 |
| 8.5 to 8.10 | 13.4 | 13.3 to 13.4 | 15.1 | 16.7 to 16.9 | 16.7 |
| 8.11 to 9.3 | 13.5 | 13.5 to 13.7 | 15.2 | 16.10 to 17.0 | 16.8 |
| 9.4 to 9.8 | 13.6 | 13.8 to 13.9 | 15.3 | 17.1 to 17.3 | 16.9 |
| 9.9 to 10.0 | 13.7 | 13.10 to 14.0 | 15.4 | 17.4 to 17.7 | 17.0 |
| 10.1 to 10.4 | 13.8 | 14.1 to 14.2 | 15.5 | 17.8 to 17.11 | 17.1 |
| 10.5 to 10.7 | 13.9 | | | | |

* * * * *

106.00 GENITOURINARY IMPAIRMENTS

* * * * *

C. *What other factors do we consider when we evaluate your genitourinary disorder?*

* * * * *

5. *Growth failure due to any chronic renal disease.*

a. To evaluate growth failure due to any chronic renal disease, we require documentation of the laboratory findings described in 106.08A and the growth measurements in 106.08B within the same consecutive 12-month period. The dates of laboratory findings may be different from the dates of growth measurements.

b. Under 106.08B, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

(i) For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

(ii) For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

(iii) BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

* * * * *

106.08 *Growth failure due to any chronic renal disease* (see 106.00C5), with:

A. Serum creatinine of 2 mg/dL or greater, documented at least two times within a consecutive 12-month period with at least 60 days between measurements.

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18,* three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

* * * * *

114.00 IMMUNE SYSTEM DISORDERS

* * * * *

F. * * *

* * * * *

4. *HIV infection manifestations specific to children.*

* * * * *

d. *Growth failure due to HIV immune suppression.*

(i) To evaluate growth failure due to HIV immune suppression, we require documentation of the laboratory values described in 114.08H1 and the growth measurements in 114.08H2 or 114.08H3 within the same consecutive 12-month period. The dates of laboratory findings may be different from the dates of growth measurements.

(ii) Under 114.08H2 and 114.08H3, we use the appropriate table under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

(A) For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

(B) For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

(C) BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

* * * * *

114.08 * * *

* * * * *

H. *Immune suppression and growth failure* (see 114.00F4d) documented by 1 and 2, or by 1 and 3.

1. CD4 measurement:

a. *For children from birth to attainment of age 5,* CD4 percentage of less than 20 percent; or

b. *For children age 5 to attainment of age 18,* absolute CD4 count of less than 200 cells/$mm^3$, or CD4 percentage of less than 14 percent; and

2. *For children from birth to attainment of age 2,* three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

3. *For children age 2 to attainment of age 18,* three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart I—[Amended]

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 4. Amend § 416.924b by revising paragraph (b) to read as follows:

**§ 416.924b Age as a factor of evaluation in the sequential evaluation process for children.**

* * * * *

(b) *Correcting chronological age of premature infants.* We generally use chronological age (a child's age based on birth date) when we decide whether, or the extent to which, a physical or mental impairment or combination of impairments causes functional limitations. However, if you were born prematurely, we may consider you younger than your chronological age when we evaluate your development. We may use a ''corrected'' chronological age (CCA); that is, your chronological age adjusted by a period of gestational prematurity. We consider an infant born at less than 37 weeks' gestation to be born prematurely.

(1) We compute your CCA by subtracting the number of weeks of prematurity (the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation) from your chronological age. For example, if your chronological age is 20

weeks but you were born at 32 weeks gestation (8 weeks premature), then your CCA is 12 weeks.

(2) We evaluate developmental delay in a premature child until the child's prematurity is no longer a relevant factor, generally no later than about chronological age 2.

(i) If you have not attained age 1 and were born prematurely, we will assess your development using your CCA.

(ii) If you are over age 1 and have a developmental delay, and prematurity is still a relevant factor, we will decide whether to correct your chronological age. We will base our decision on our judgment and all the facts in your case. If we decide to correct your chronological age, we may correct it by subtracting the full number of weeks of prematurity or a lesser number of weeks. If your developmental delay is the result of your medically determinable impairment(s) and is not attributable to your prematurity, we will decide not to correct your chronological age.

(3) Notwithstanding the provisions in paragraph (b)(1) of this section, we will not compute a CCA if the medical evidence shows that your treating source or other medical source has already taken your prematurity into consideration in his or her assessment of your development. We will not compute a CCA when we find you disabled under listing 100.04 of the Listing of Impairments.

**§ 416.926a [Amended]**

■ 5. Amend § 416.926a by removing paragraphs (m)(6) and (m)(7) and redesignating paragraph (m)(8) as (m)(6).

■ 6. Amend § 416.934 by adding paragraphs (j) and (k) to read as follows:

**§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.**

* * * * *

(j) Infants weighing less than 1200 grams at birth, until attainment of 1 year of age.

(k) Infants weighing at least 1200 but less than 2000 grams at birth, and who are small for gestational age, until attainment of 1 year of age. (Small for gestational age means a birth weight that is at or more than 2 standard deviations below the mean or that is less than the third growth percentile for the gestational age of the infant.)

[FR Doc. 2015–08185 Filed 4–10–15; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 1020

**[Docket No. FDA–2015–N–0828]**

## Performance Standards for Ionizing Radiation Emitting Products; Fluoroscopic Equipment; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending a Federal performance standard for ionizing radiation to correct a drafting error regarding fluoroscopic equipment measurement. We are taking this action to ensure clarity and improve the accuracy of the regulations.

**DATES:** This rule is effective August 26, 2015. Submit electronic or written comments on this direct final rule or its companion proposed rule by June 29, 2015.

**ADDRESSES:** You may submit comments by any of the following methods:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written Submissions*

Submit written comments in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Docket No. FDA–2015–N–0828 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Scott Gonzalez, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4641, Silver Spring, MD 20993–0002, 301–796–5889.

**SUPPLEMENTARY INFORMATION:**

### I. What is the background of this Rule?

FDA is correcting a drafting error regarding fluoroscopic equipment measurement in § 1020.32 (21 CFR 1020.32). We are publishing this direct final rule because it is intended to make a noncontroversial amendment to § 1020.32, and we do not anticipate any significant adverse comments. Specifically, this amendment changes the words ''any linear dimension'' in the current regulation to read ''every linear dimension'' (§ 1020.32(b)(4)(ii)(A)). The alternative performance standard, § 1020.32(b)(4)(ii)(B), currently contains the same phrase but remains unchanged. We are amending the language to make the performance standards mutually exclusive. This will ensure clarity and improve the accuracy of the regulations.

FDA first proposed the performance standards in the **Federal Register** of December 10, 2002 (67 FR 76056), to account for technological changes in fluoroscopic equipment. The proposed rule did not specify which measurement of the visible area of an image receptor determined the applicable performance standard (67 FR 76056 at 76092). When we addressed comments to the proposed rule in the **Federal Register** of June 10, 2005, we agreed with one comment that adding the words ''any linear dimension'' would clarify the determination of the performance standard (70 FR 33998 at 34007).

FDA ultimately incorporated the phrase in two places, potentially reducing the clarity of the rule (70 FR 33998 at 34040). Section 1020.32(b)(4)(ii) sets performance standards based on a threshold, so the language for each standard should be mutually exclusive. That is, only one standard, and not the other, should apply to the image receptor in question. However, some image receptors may have linear dimensions that are both greater than and less than 34 cm, for example, receptors with a hexagonal shape. In such cases, the performance standards may not be mutually exclusive, so both standards may appear to apply. This direct final rule amends § 1020.32(b)(4)(ii)(A) to read ''every linear dimension'' to ensure the standards are mutually exclusive. The amendment will improve the clarity and accuracy of the regulations.

**II. What are the procedures for issuing a direct Final Rule?**

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA announced the availability of the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures'' that described when and how we will employ direct final rulemaking. We believe that this rule is appropriate for direct final rulemaking because it is intended to make a noncontroversial amendment for a minor correction to an existing regulation. We anticipate no significant adverse comments.

Consistent with FDA's procedures on direct final rulemaking, we are publishing a companion proposed rule elsewhere in this issue of the **Federal Register**. That proposed rule is identical in substance to this direct final rule. The companion proposal will provide a procedural framework to finalize a new rule in the event we withdraw this direct final rule because we receive significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. We will consider any comments that we receive in response to the companion proposed rule to be comments also regarding this direct final rule and vice versa.

If FDA receives any significant adverse comments, we will withdraw this direct final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is one that explains why the rule would be inappropriate (including challenges to the rule's underlying premise or approach), ineffective, or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If we withdraw this direct final rule, FDA will consider all comments that we received regarding the companion proposed rule as we develop a final rule through the usual notice-and-comment procedures of the APA (5 U.S.C. 552a, *et seq.*). If we receive no significant adverse comments during the specified comment period regarding this direct final rule, we intend to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends.

**III. What is the legal authority for this Rule?**

This rule, if finalized, would amend § 1020.32. FDA's authority to modify § 1020.32 arises from the same authority under which FDA initially issued this regulation, the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, and 381).

**IV. What is the environmental impact of this Rule?**

FDA has determined under 21 CFR 25.30(h) and 25.34(a) 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.

**V. What is the economic analysis of impact of this Rule?**

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, 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 Agencies 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). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not add any additional regulatory burdens, the Agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''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 $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in a 1-year expenditure that meets or exceeds this amount.

The purpose of this final rule is to correct a drafting error regarding fluoroscopic equipment measurement in a performance standard for ionizing radiation. The amendment will improve the clarity and accuracy of the regulations. Because this final rule is a technical correction and would impose no additional regulatory burdens, this regulation is not anticipated to result in any compliance costs, and the economic impact is expected to be minimal.

**VI. How does the Paperwork Reduction Act of 1995 apply to this Rule?**

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

**VII. What are the Federalism implications of this Rule?**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has 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, the Agency has concluded 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.

**VIII. How do you submit comments on this Rule?**

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division

of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

**List of Subjects in 21 CFR Part 1020**

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1020 is amended as follows:

## PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

■ 1. The authority citation for 21 CFR part 1020 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, 381.

■ 2. Revise § 1020.32(b)(4)(ii)(A) to read as follows:

**§ 1020.32 Fluoroscopic equipment.**

(b) * * *

(4) * * *

(ii) * * *

(A) When every linear dimension of the visible area of the image receptor measured through the center of the visible area is less than or equal to 34 cm in any direction, at least 80 percent of the area of the x-ray field overlaps the visible area of the image.

* * * * *

Dated: April 7, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08360 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### 31 CFR Part 542

### Syrian Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control is amending the Syrian Sanctions Regulations to authorize by general license certain activities relating to publishing, not already exempt from regulation, that support the publishing and marketing of manuscripts, books, journals, and newspapers in paper and electronic format.

**DATES:** *Effective:* April 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–6746, Assistant Director for Regulatory Affairs, tel: 202/622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

**Background**

On April 5, 2005, the Office of Foreign Assets Control (OFAC) issued the Syrian Sanctions Regulations, 31 CFR part 542 (the ''Regulations'') (70 FR 17201, April 5, 2005), to implement Executive Order 13338 of May 11, 2004 (69 FR 26751, May 13, 2004) (E.O. 13338), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA). On May 2, 2014, OFAC amended the Regulations to implement Executive Order 13399 of April 25, 2006 (71 FR 25059, April 28, 2006) (E.O. 13399), Executive Order 13460 of February 13, 2008 (73 FR 8991, February 15, 2008) (E.O. 13460), Executive Order 13572 of April 29, 2011 (76 FR 24787, May 3, 2011) (E.O. 13572), Executive Order 13573 of May 18, 2011 (76 FR 29143, May 20, 2011) (E.O. 13573), Executive Order 13582 of August 17, 2011 (76 FR 52209, August 22, 2011) (E.O. 13582), and Executive Order 13606 of April 22, 2012 (77 FR 24571, April 24, 2012) (E.O. 13606). Today, OFAC is amending the Regulations to authorize certain activities relating to publishing.

With certain exceptions, the exportation or importation of information or informational materials to or from any country is exempt from regulation by the President under IEEPA. *See* 50 U.S.C. 1702(b)(3); 31 CFR 542.211(b). OFAC is issuing a new general license set forth at 31 CFR 542.532 to authorize, subject to certain limitations, transactions not already exempt from regulation that support the publishing and marketing of manuscripts, books, journals, and newspapers, in paper or electronic format.

**Public Participation**

Because the amendment of the Regulations involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

**Paperwork Reduction Act**

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

**List of Subjects in 31 CFR Part 542**

Administrative practice and procedure, Exports, Foreign trade, Information, Services, Syria.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 542 as set forth below:

## PART 542—SYRIAN SANCTIONS REGULATIONS

■ 1. The authority citation for part 542 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1701 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p.236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p.243.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Add new § 542.532 to read as follows:

**§ 542.532 Authorized transactions necessary and ordinarily incident to publishing.**

(a) Subject to the restrictions set forth in paragraphs (b) through (d) of this section, U.S. persons are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, ''written publications''). This section does not apply if the parties to the transactions described in this paragraph include the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201. For the purposes of this section, the term ''Government of Syria'' includes the state and the Government of the Syrian Arab Republic, as well as any political subdivision, agency, or instrumentality thereof, which includes the Central Bank of Syria, and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Syria'' does not include any academic or research institutions and their personnel. Pursuant to this section, the following activities are authorized, provided that U.S. persons ensure that they are not engaging, without separate authorization, in the activities identified in paragraphs (b) through (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3)(i) Augmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text, and, for a written publication in electronic format, the addition of embedded software necessary for reading, browsing, navigating, or searching the written publication; and

(ii) Exporting embedded software necessary for reading, browsing, navigating, or searching a written publication in electronic format, provided that the software is designated as ''EAR99'' under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), or is not subject to the EAR;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described in paragraph (a) of this section. For example, this section does not authorize U.S. persons:

(1) To provide or, if involving blocked property, to receive individualized or customized services (including accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information or informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Syria;

(3) To engage in the exportation or, if involving blocked property, the importation of goods to or from Syria other than the exportation of embedded software described in paragraph (a)(3)(ii) of this section; or

(4) To operate a publishing house, sales outlet, or other office in Syria.

**Note to paragraph (b) of § 542.532:** The importation from Syria and the exportation to Syria of information or informational materials, as defined in § 542.307, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part. See § 542.211(b).

(c) This section does not authorize U.S. persons to engage the services of publishing houses or translators in Syria that involves dealing in property unless such activity is primarily for the dissemination of written publications in Syria.

(d) This section does not authorize:

(1) The exportation from or, if involving blocked property, the importation into the United States of services for the development, production, or design of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (the ''ITAR''), the EAR, or the Department of Energy Regulations set forth at 10 CFR part 810;

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of any item (including information) subject to the EAR where a U.S. person knows or has reason to know that the item will be used, directly or indirectly, with respect to certain nuclear, missile, chemical, or biological weapons or nuclear-maritime end-uses as set forth in part 744 of the EAR. In addition, U.S. persons are precluded from exporting any item subject to the EAR to certain restricted end-users, as set forth in part 744 of the EAR, as well as certain persons whose export privileges have been denied pursuant to parts 764 or 766 of the EAR, without authorization from the Department of Commerce; or

(5) The exportation of information subject to licensing requirements under the ITAR or exchanges of information that are subject to regulation by other government agencies.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2015–08374 Filed 4–10–15; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF DEFENSE

## Department of the Navy

## 32 CFR Part 706

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

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, as amended (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS CORONADO (LCS 4) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this

rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective April 13, 2015 and is applicable beginning April 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Commander Theron R. Korsak, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

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

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CORONADO (LCS 4) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(c), pertaining to the task light's horizontal distance from the fore and aft centerline of the vessel in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

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

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

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

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

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

■ 2. Section 706.2 is amended in Table Five by revising the entry for USS CORONADO (LCS 4) to read as follows:

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

* * * * *

* * * * *

TABLE FOUR

| Vessel | Number | Horizontal distance from the fore and aft centerline of the vessel in the athwart ship direction |
|---|---|---|
| * * | * | * * |
| USS CORONADO ..... | LCS 4 | 0.18 |
| * * | * | * * |

* * * * *

Approved: April 1, 2015.

**A.B. Fischer,**

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

Dated: April 6, 2015.

**N. A. Hagerty-Ford,**

*Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2015–08422 Filed 4–10–15; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 38

**RIN 2900–AO99**

## Reimbursement for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) National Cemetery Administration (NCA) amends its regulations to establish a new program to provide reimbursement for caskets and urns for the interment of the remains of veterans with no known next-of-kin and where sufficient financial resources are not available for this purpose.

**DATES:** *Effective date:* The final rule is effective May 13, 2015. *Applicability date:* The final rule applies to claims for reimbursement for burial receptacles for individuals who died on or after January 10, 2014.

**FOR FURTHER INFORMATION CONTACT:** Andrina Brown, Office of Field Programs (41A), National Cemetery Administration (NCA), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 461–6833 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In a document published on July 2, 2014 (79 FR 37698), VA proposed revising its regulations governing burial in national cemeteries to implement new authority under section 2306 of title 38, United States Code (U.S.C.), to furnish a casket or urn for interment in a VA national cemetery of the unclaimed remains of veterans for whom VA cannot identify a next-of-kin and determines that sufficient financial resources for the furnishing of a casket or urn for burial are not otherwise available. The 30-day public comment period ended on August 1, 2014. VA received fourteen comments from interested individuals and organizations. To address some of those comments, as will be explained in detail below, VA added a new paragraph (b) and redesignated proposed paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively.

Eight commenters expressed support for the proposed amendment. We thank these individuals for taking the time to review and comment on the rulemaking. We make no changes to the regulation based on these comments.

One commenter suggested that VA contract with online providers of caskets and urns to make bulk purchases of caskets and urns, which would then be shipped to individuals who apply online. As discussed in the preamble to the proposed rulemaking, VA considered the direct purchase option but determined that would be a less efficient and economical means of administering this benefit. Development of an online application portal and establishment of contractual relationships with suppliers would require considerable time and would delay VA's ability to timely provide this benefit as needs arise. The expense required to contract and to build an online portal would decrease the resources available to provide the benefit itself. The commenter stated that he felt the suggestion would allow for ''quality control.'' As we indicated in the preamble to the proposed rulemaking, unclaimed veteran remains are often in the custody of funeral homes or others who are authorized under state law to dispose of unclaimed remains. 79 FR at 37699. Therefore, we believe they are likely familiar with procuring burial receptacles. We further

expect that those who will provide caskets or urns will use the same suppliers from whom they purchase caskets and urns for the families they serve in their normal course of business and that the caskets and urns they purchase will be of no lesser quality than those provided for family-requested funeral services. Further, as we provide in redesignated § 38.628(c)(5), VA will visually inspect the casket or urn when it is presented at the national cemetery to ensure that it corresponds to the description in the invoice and meets NCA's specifications, which are intended to ensure safe handling and integrity of veteran remains. Accordingly, VA makes no changes based on this comment.

Another commenter urged that we implement this benefit so that it is ''not cumbersome to administer and is fair in the time it takes to reimburse.'' We believe that the reimbursement program we have outlined in our regulation meets both of those criteria. The commenter further suggested that VA develop a form and process for eligible veterans to ''pre-order [and] get pre-authorized'' to assist them with advance planning. Generally, VA encourages veterans and their families to plan for their burial needs. However, while such a plan may include a stated desire to be buried in a national cemetery, VA has no authority to pre-determine eligibility for burial or memorialization, because eligibility decisions must be made based on the law in effect at the time the individual dies. If, upon the death of an eligible veteran, VA is made aware of the veteran's wishes regarding burial, VA will try to accommodate those wishes to the fullest extent possible. This regulation, however, is applicable when a veteran dies without sufficient funds available for burial and has no known next-of-kin. Third parties, such as public administrators, local coroners, funeral directors or volunteer organizations, who may have assumed responsibility for the burial of these unclaimed remains, will likely be unaware of any wishes for burial arrangements. However, even without knowing the burial wishes of the deceased veteran, by establishing a means to reimburse these third parties for the expense of a burial receptacle at a time of need, VA will ensure that these veterans receive an appropriate burial in a national cemetery. VA will make no changes based on this comment.

VA received comments from a funeral services trade association on two issues. The first issue concerned our reference to the Federal Trade Commission (FTC) regulations that define ''alternative container'' which VA construed as applicable to cremation urns. The commenter stated that ''alternative container,'' in the funeral industry, ''is the receptacle that the body is placed into prior to cremation.'' The commenter also stated that plastic is ''generally not deemed appropriate for use as an urn.'' The commenter then suggested that we revise our regulation to include wood or metal, in addition to durable plastic, as an acceptable material for urns subject to reimbursement under § 38.628. We reviewed the FTC regulation in light of this feedback and believe that the commenter's statement that an alternative container refers to a receptacle for the body prior to cremation is an accurate interpretation of the FTC regulation, which states that requiring the public to purchase a casket for direct cremations is an unfair or deceptive act or practice for a funeral provider and requires funeral providers to ''make an alternative container available for direct cremations.'' See 16 CFR 453.4(a)(2). We wish to correct the statement made in the preamble to the proposed rule (see 79 FR at 37699). However, we did not ''base'' the definition of ''urn'' in § 38.628 on the phrase ''alternative container'' (we did use the definition of ''casket'' from the FTC regulation) nor was ''alternative container'' used elsewhere in the proposed rulemaking. Our definition of urn was developed using the elements we felt necessary for a burial receptacle that would ensure that the cremated remains of veterans, in the absence of a family member to make such determinations, are laid to rest in a consistently dignified manner. We have decided that, for purposes of reimbursement, an urn made of durable plastic would be the minimum requirement because we must ensure that we use the finite resources at our disposal to provide this benefit for as many veterans, without family or resources, as we can. We disagree with the commenter's assertion that durable plastic is ''generally not deemed appropriate for use as an urn.'' In fact, many of the inurnments at national cemeteries are of urns constructed of durable plastic, so while the commenter is correct that many families may choose to place the remains in urns of different construction, we can confirm that many find a durable plastic urn to be appropriate for the remains of their loved one.

Regarding the commenter's request that we amend the regulation to include other materials for urn construction, although we stated in the preamble to the proposed rulemaking that we do not prohibit individuals or entities from purchasing burial receptacles of higher standard, such as a stronger gauge metal for caskets, or wood or metal for urns, this comment indicates that our information was not sufficiently clear as to the types of caskets and urns that would be acceptable for reimbursement, and therefore we are making changes to the regulation to address the issue the commenter raises, although we will not be using the amendment suggested in the comment.

Proposed § 38.628(b)(5), now redesignated § 38.628(c)(5), was intended to prescribe certain minimum standards for caskets and urns that would ensure that each veteran, in the absence of a family member to make burial decisions, is laid to rest in a consistently dignified manner. We are making changes to redesignated paragraph (c)(5)(ii) to specifically address the commenter's concern by stating that individuals or entities may purchase and request reimbursement for urns constructed of materials other than durable plastic, including wood, metal, or ceramic, even though reimbursement will be limited to the average cost of a durable plastic urn. In reviewing this provision, we also noted that the casket provision may be subject to misinterpretation so we have amended redesignated paragraph (c)(5)(i) to clarify that the caskets must be of metal construction, but may be of a thicker gauge metal, even though reimbursement will be limited to the average cost of a casket of 20-gauge metal construction. We note that these changes will allow for only one material, metal, for the construction of caskets while urns may be constructed of a variety of materials. As stated in the proposed rulemaking, we established minimum standards to ensure the burial receptacles could withstand disinterment and reinterment, should that need arise. We explicitly require metal caskets because we believe they will endure the environmental conditions of in-ground burial better than other materials and keep the remains intact. Urns may be inurned in above-ground niches, so their construction may not need to endure the rigors of in-ground burial. For those that will be inurned in the ground, we note that an urn will include an interior container for the cremated remains that will help ensure their integrity if the outer construction should fail.

While we have amended the language regarding the construction of a casket or an urn, we do not change the standard used to calculate the maximum reimbursement amount under

redesignated paragraph (d). As stated in the proposed rule, we established a maximum reimbursement amount based on the minimum construction standards of either a casket or an urn. VA will reimburse for the actual cost of a burial receptacle, as shown on an invoice, up to a maximum reimbursement amount that is equal to the average cost of receptacles meeting the minimum standards for the fiscal year preceding the calendar year of when a claim for reimbursement is received. To ensure that the edits to redesignated paragraph (c) described above do not confuse how we calculate the average cost, we will state the minimum standards in redesignated paragraph (d), which establishes the maximum reimbursement amount. We reiterate here that VA will only reimburse for a single casket or urn purchased on behalf of any decedent and that, under redesignated § 38.628(c)(5), the cemetery director receiving the remains will visually inspect the casket or urn that is presented for burial or inurnment to ensure that it matches the description on the invoice submitted for payment. Therefore, if, as the commenter explained, the cremated remains are moved from one container to another of a different material, we will only reimburse for the cost of the urn presented for burial, subject to the maximum reimbursement amount. Any individual or entity seeking reimbursement must ensure that the invoice presented for payment is the invoice for the burial receptacle presented for burial.

The same commenter noted a second issue regarding proposed paragraph (b)(2), now redesignated paragraph (c)(2), and the requirement that individuals seeking reimbursement certify that they cannot identify the decedent's next-of-kin and that VA's records do not identify the next-of-kin. The commenter objected that, because they do not have access to VA's records, they could not certify as to whether a next-of-kin was identified there. The commenter also added that funeral homes are often faced with a dilemma in which a deceased veteran's next-of-kin is identified but is unwilling or unable to assume responsibility for burial arrangements. The commenter suggested a clarification to reflect that an applicant who provides a casket or urn because of an uncooperative next-of-kin would still be entitled to reimbursement. We acknowledge the commenter's concerns are valid.

As an initial matter, we have determined that the required findings that a veteran have no known next-of-kin or sufficient resources to furnish a casket or urn can be satisfied by the applicant's certification to that effect. State and local laws governing the disposition of unclaimed remains require, generally, that a search be performed to identify a decedent's next-of-kin or authorized representative who may assume responsibility for the final disposition of the remains. VA believes that it would be reasonable to rely on the applicant's certification that no next-of-kin was identified as a result of an independent search performed in compliance with the legal requirements of that jurisdiction. The intent of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (the Act) is to assist individuals or entities in possession of remains that are unclaimed in providing for the final disposition of those remains. Because we believe that an additional search by VA of its own records would be duplicative of this process and could potentially delay or even deter individuals or entities from bringing unclaimed veteran remains to VA for burial, we find that reliance on the applicant's certification that no next-of-kin has been identified is reasonable. Moreover, because laws related to the disposition of unclaimed remains also involve determinations of the decedent's indigency, VA will also accept the applicant's certification that, based upon available information, there are insufficient financial resources available to furnish a burial receptacle. Accordingly, we have added paragraph (b) to state that we will rely on the applicant's certification. Proposed paragraphs (b), (c), and (d) will now become paragraphs (c), (d), and (e), respectively, and we further amend redesignated paragraphs (c)(2) and (c)(3) to eliminate any requirement that an individual or entity seeking reimbursement must certify as to what is in VA records.

In redesignated paragraph (c)(2), we explicitly allow for the circumstance of the ''uncooperative next-of-kin,'' as described by the commenter. As we stated in the preamble to the proposed rule, we cannot compel an identified next-of-kin of a deceased veteran who is unwilling or unable to assume responsibility for the deceased veteran's burial. We recognize that relevant state and local laws include provisions applicable to the type of situation described by the commenter. These laws often address the situation by allowing individuals or entities in possession of remains that are unclaimed to arrange for burial after a defined period of time, despite the existence of an uncooperative relative who may have means, but refuses to claim the decedent's remains or arrange for final disposition. We therefore add a provision to redesignated paragraph (c)(2) to require the applicant to certify that they have followed the relevant state or local laws relating to the disposition of remains. VA will accept an applicant's certification that an identified next-of-kin is unwilling or unable to assume responsibility for the deceased veteran's burial arrangements as meeting the requirements that the decedent has no next-of-kin and insufficient resources to purchase the casket or urn.

We received a comment suggesting that we make provision for certain veterans who died prior to January 10, 2014. The effective date was defined in the authorizing statute and VA has no authority to provide caskets or urns for veterans who died prior to that date. The commenter also suggested, in his original comment and in a follow-up comment, that we make changes to regulatory provisions relating to our definition of applicant. That provision is beyond the scope of this rulemaking, but VA is planning to address it in another rulemaking soon. We make no changes to this regulation based on these comments.

One commenter questioned our estimate on the number of applications we anticipated we would receive under this regulation. We estimated that we would receive approximately 670 applications for reimbursement for a burial receptacle purchased in 2014 and that this number would decrease in years to come. The commenter appears to believe our estimate is too low, based on estimates of the total number of veterans who die yearly. Our estimate uses the total annual number of veteran deaths, but adjusts that number based on VA statistics to determine the number of veterans without a next-of-kin and where sufficient resources are unavailable to furnish a casket or urn, to determine the number that may need to be furnished a burial receptacle under this regulation. We make no changes based on this comment.

In redesignated paragraph (d), we indicate that we will publish an annual notice providing the average cost of a casket or urn that will be the maximum allowable reimbursement amount for each type of burial receptacle. In the proposed rule, we indicated we would pay these rates based on the year the burial receptacle was purchased. However, we have determined that it will be more efficient to process applications using the maximum reimbursement amounts based on the year in which the application is

received instead of the date the burial receptacle was purchased. We have changed paragraph (d) to indicate that these maximum rates apply to applications received for the purchase of a burial receptacle in a given calendar year and have deleted the reference to the date of purchase.

Finally, we are also updating redesignated paragraph (e) to indicate that we will reimburse those individuals who have been waiting for the publication of this final rule to submit their applications at the reimbursement rates for 2015. VA advised these individuals to hold their receipts until the publication of the final rule. Because publication has been delayed, and they could not submit those applications in calendar year 2014, the current maximum rates should apply. As indicated in the notice published elsewhere in this **Federal Register**, the maximum reimbursement amounts for 2015 are $1,967 for a casket and $172 for an urn, which apply to all applications received in calendar year 2015.

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with the changes as noted above to new paragraph (b) and redesignated paragraphs (c)(2), (c)(3), (c)(5), (d), and (e).

**Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the number of claims and the amounts involved are expected to be small. This rule will only impact those third parties and entities that choose to participate in this program. Payments made under this program are not intended as benefits but to provide reimbursement for privately purchased caskets and urns. We estimate the average price of a burial receptacle (and therefore the average reimbursement) for 2014 will be less than $2,000 for caskets and less than $200 for urns. We also estimate that the total number of reimbursements for 2014 will be 338 caskets and 332 urns. Because the final rulemaking provides for a reimbursement, the individual or entity purchasing the burial receptacle will recoup the purchase price, up to the maximum rate established annually. Generally this will result in the individual or entity avoiding a financial loss for having made the purchase. But, because the reimbursement will not exceed the purchase price of the burial receptacle, the individual or entity will not experience any gain. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following new information collection requirement. Section 38.628 will require submission of new VA Form 40–10088 by individuals seeking reimbursement from VA for the purchase of a casket or urn for the remains of a veteran who has no next-of-kin and where sufficient resources are unavailable to furnish a burial receptacle. The collection of information is necessary for VA to obtain information sufficient to determine whether reimbursement is appropriate. Information provided will include proof that the requesting individual purchased the burial receptacle and that the burial receptacle meets standards detailed in the regulation, and the purchase price of the receptacle. VA will use this information to determine whether reimbursement is appropriate and, if so, the appropriate amount of the reimbursement.

As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA submitted this information collection to OMB for its review. OMB approved this new information collection requirement associated with the final rule and assigned OMB control number 2900–0799.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov*, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/*, by following the link for ''VA Regulations Published.''

**Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance program number and title for this rule are 64.201, National Cemeteries.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on April 7, 2015, for publication.

**List of Subjects in 38 CFR Part 38**

Administrative practice and procedure, Cemeteries, Veterans.

Dated April 8, 2015.

**William F. Russo,**

*Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

## PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

**Authority:** 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2408, 2411, 7105.

■ 2. Add § 38.628 to read as follows:

**§ 38.628. Reimbursement for caskets and urns for unclaimed remains of veterans.**

(a) VA will reimburse any individual or entity for the actual cost of a casket or an urn, purchased by the individual or entity for the burial in a national cemetery of an eligible veteran who died on or after January 10, 2014, for whom VA:

(1) Is unable to identify the veteran's next-of-kin; and

(2) Determines that sufficient resources are otherwise unavailable to furnish the casket or urn.

(b) For purposes of satisfying the requirements of paragraph (a) of this section, VA will rely entirely on the requesting individual's or entity's certification as required under paragraphs (c)(2) and (3) of this section.

(c) An individual or entity may request reimbursement from VA under paragraph (a) of this section by completing and submitting VA Form 40–10088, and supporting documentation, in accordance with the instructions on the form. Prior to approving reimbursement VA must find all of the following:

(1) The veteran is eligible for burial in a VA national cemetery;

(2) The individual or entity has certified that they cannot identify the veteran's next-of-kin, or that an identified next-of-kin is unwilling or unable to assume responsibility for the deceased veteran's burial arrangements, and that the individual or entity has followed applicable state or local law relating to the disposition of unclaimed remains;

(3) The individual or entity has certified that, to the best of their knowledge, sufficient resources are otherwise unavailable to furnish the casket or urn;

(4) The invoice presented by the individual or entity clearly indicates the purchase price of the casket or urn purchased by the individual or entity; and

(5) The invoice presented by the individual or entity contains information sufficient for VA to determine, in conjunction with a visual inspection, that the casket or urn meets the following standards:

(i) Caskets must be of metal construction of at least 20-gauge thickness, designed for containing human remains, sufficient to contain the remains of the deceased veteran, include a gasketed seal, and include external fixed rails or swing arm handles.

(ii) Urns must be of a durable construction, such as durable plastic, wood, metal, or ceramic, designed to contain cremated human remains, and include a secure closure to contain the cremated remains.

(d) Reimbursement for a claim received in any calendar year under paragraph (a) of this section will not exceed the average cost of a 20-gauge metal casket or a durable plastic urn during the fiscal year preceding the calendar year of the claim, as determined by VA and published annually in the **Federal Register**.

(e) If, before July 2, 2014, an individual or entity purchased a casket or urn for burial in a VA national cemetery of the remains of a veteran who died after January 10, 2014, and the burial receptacle is not at least a 20-gauge metal casket or a durable plastic urn, VA will reimburse the purchase price of the burial receptacle, providing all other criteria in this regulation are met. The reimbursement amount will be subject to the maximum reimbursement amount calculated for 2015.

(Authority: 38 U.S.C. 2306, 2402, 2411)

(The Office of Management and Budget has approved the information collection requirements under this section under control number 2900–0799.)

[FR Doc. 2015–08388 Filed 4–10–15; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2014–0701; FRL–9925–93–Region 3]**

### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards; Approval of Air Pollution Emergency Episode Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of three State Implementation Plan (SIP) revision submittals from the District of Columbia (the District) pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The District has made three separate submittals addressing the infrastructure requirements for the 2008 ozone NAAQS, the 2010 nitrogen dioxide ($NO_2$) NAAQS, and the 2010 sulfur dioxide ($SO_2$) NAAQS. One of the submittals also includes the ''Revised Air Quality Emergency Plan for the District of Columbia'' for satisfying EPA's requirements for air quality emergency episodes.

**DATES:** This final rule is effective on May 13, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0701. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business

information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 21, 2014 (80 FR 2865), EPA published a notice of proposed rulemaking (NPR) for the District. In the NPR, EPA proposed approval of portions of the District's three infrastructure SIP submissions addressing the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS, the 2010 $NO_2$ NAAQS, and the 2010 $SO_2$ NAAQS. The NPR also proposed approval of the District's Air Quality Emergency Plan to meet EPA's requirements for air pollution prevention contingency plans in 40 CFR part 51, subpart H and section 110(a)(2)(G) of the CAA.

## II. Summary of SIP Revision

The District, through the District Department of the Environment (DDOE), submitted three separate revisions to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the different NAAQS. On June 6, 2014, DDOE submitted a SIP revision addressing the infrastructure requirements for the 2010 $NO_2$ NAAQS. On June 13, 2014, DDOE submitted an infrastructure SIP revision for the 2008 ozone NAAQS. On July 17, 2014, DDOE submitted an infrastructure SIP revision for the 2010 $SO_2$ NAAQS. Each of the infrastructure SIP revisions addressed the following infrastructure elements for the applicable NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. The infrastructure SIP submittals do not address section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process, if necessary.

As discussed in the NPR, EPA will take separate action on the portions of the three infrastructure submittals addressing section 110(a)(2)(D)(i)(I) requiring the SIP to address emissions from sources which significantly contribute to nonattainment or interference with maintenance of the NAAQS (also referred to as transport) in another state. In addition, EPA is not required to take rulemaking action on the PSD-related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the District's infrastructure SIP submittals, as EPA found these portions of each of the infrastructure SIP submittals technically incomplete, because the District has not adequately addressed the SIP requirements of part C of Title I of the CAA for having a SIP-approved PSD program.[1] However, EPA recognizes that the District is already subject to a Federal Implementation Plan (FIP) containing the Federal PSD program that addresses the relevant SIP requirements.[2] EPA does not anticipate any adverse consequences to DDOE from these incompleteness findings. In addition, EPA is not subject to any further FIP duties from these incompleteness findings because a FIP has already been issued to address this SIP deficiency.

In addition, the June 13, 2014 SIP submittal included the ''Revised Air Quality Emergency Plan for the District of Columbia'' to satisfy the requirements for preventing air pollution emergency episodes in 40 CFR part 51, subpart H for all applicable pollutants (*i.e.,* those for which the District is classified as a Priority I region under 40 CFR 52.471, including particulate matter, sulfur oxides ($SO_X$), carbon monoxide (CO), and ozone), as well as section 110(a)(2)(G) of the CAA for the three subject NAAQS.

EPA's rationale for taking this rulemaking action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD for this rulemaking is available at *www.regulations.gov,* Docket number EPA–R03–OAR–2014–0701. No public comments were received on the NPR.

[1] EPA sent letters to DDOE in July 21, 2014 and November 4, 2014 notifying the District of these determinations for each of the applicable NAAQS. Copies of these letters are included in the docket for this rulemaking action.

[2] At present, the PSD FIP, incorporated by reference in the District SIP in 40 CFR 52.499, specifically contains the provisions of 40 CFR 52.21, with the exception of paragraph (a)(1).

## III. Final Action

EPA is approving the District's infrastructure submittals dated June 6, 2014, June 13, 2014, and July 17, 2014 for the 2010 $NO_2$ NAAQS, the 2008 ozone NAAQS, and the 2010 $SO_2$ NAAQS, respectively, as meeting the following requirements of section 110(a)(2) of the CAA for the three relevant NAAQS: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA will take later separate action on the portions of each of the submittals addressing section 110(a)(2)(D)(i)(I), pertaining to transport. EPA is also approving as a SIP revision the ''Revised Air Quality Emergency Plan for the District of Columbia,'' submitted on June 13, 2014, as it satisfies the requirements of 40 CFR part 51, subpart H for all applicable pollutants and section 110(a)(2)(G) of the CAA for the 2008 ozone NAAQS, the 2010 $NO_2$ NAAQS, and the 2010 $SO_2$ NAAQS.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the District of Columbia's section 110(a)(2) infrastructure requirements for the 2008 ozone, the 2010 $NO_2$, and the 2010 $SO_2$ NAAQS and to the District of Columbia's contingency plan for the prevention of air pollution episodes, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 24, 2015.

**William C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding the following four entries at the end of the table:

■ a. ''Section 110(a)(2) Infrastructure Requirements for the 2010 $NO_2$ NAAQS'';

■ b. ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS'';

■ c. ''Section 110(a)(2) Infrastructure Requirements for the 2010 $SO_2$ NAAQS''; and

■ d. ''Emergency Air Pollution Plan''.

The additions read as follows:

**§ 52.470 Identification of plan.**

* * * * *

(e) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Section 110(a)(2) Infrastructure Requirements for the 2010 $NO_2$ NAAQS. | Statewide | 6/9/14 | 4/13/15 [*Insert **Federal Register** Citation*]. | This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499. |
| Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS. | Statewide | 6/13/14 | 4/13/15 [*Insert **Federal Register** Citation*]. | This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499. |
| Section 110(a)(2) Infrastructure Requirements for the 2010 $SO_2$ NAAQS. | Statewide | 7/17/14 | 4/13/15 [*Insert **Federal Register** Citation*]. | This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499. |
| Emergency Air Pollution Plan | Statewide | 6/13/14 | 4/13/15 [*Insert **Federal Register** Citation*]. | This action addresses the requirements of 40 CFR 51, subpart H for particulate matter, sulfur oxides ($SO_X$), carbon monoxide (CO), and ozone, as well as section 110(a)(2)(G) of the CAA for the 2008 ozone, 2010 $SO_2$, and 2010 $NO_2$ NAAQS. |

[FR Doc. 2015–08182 Filed 4–10–15; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2013–0593; FRL–9925–96–Region–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Virginia—Prevention of Significant Deterioration; Amendment to the Definition of ''Regulated NSR Pollutant'' Concerning Condensable Particulate Matter

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a July 25, 2013 State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) for the Commonwealth of Virginia. The revision includes a correction to the definition of ''regulated NSR [New Source Review] pollutant'' as it relates to condensable particulate matter under Virginia's Prevention of Significant Deterioration (PSD) program. The revision also includes the correction of a minor typographical error. EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on June 12, 2015 without further notice, unless EPA receives adverse written comment by May 13, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0593 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Email: *campbell.dave@epa.gov.*

C. Mail: EPA–R03–OAR–2013–0593, David Campbell, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0593. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**DOCKET:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 25, 2013, VADEQ submitted a formal revision to the Virginia SIP. The SIP revision consists of an amendment to the definition of ''regulated NSR pollutant'' for VADEQ's PSD program under Article 8 of Chapter 80 of the Virginia Administrative Code (VAC), as well as a correction of a minor typographical error. The definition revision pertains to the regulation of particulate matter, specifically, gases that condense to form particles (condensables).

''Particulate matter'' (PM) is a term used to define an air pollutant that consists of a mixture of solid particles and liquid droplets found in the ambient air. PM occurs in many sizes and shapes and can be made up of hundreds of different chemicals. As explained further in the discussion that follows, EPA has regulated several size ranges of particles under the CAA, referred to as indicators of particles, namely PM, coarse PM ($PM_{10}$), and fine PM ($PM_{2.5}$).

Initially, EPA established a National Ambient Air Quality Standard (NAAQS) for PM on April 30, 1971, under sections 108 and 109 of the CAA. *See* 36 FR 8186. Compliance with the original PM NAAQS was based on the measurement of particles in the ambient air using an indicator of particles measuring up to a nominal size of 25 to 45 micrometers (μm). EPA used the indicator name ''total suspended particulate'' or ''TSP'' to define the particle size range that was being measured. Total suspended particulate remained the indicator for the PM NAAQS until 1987 when EPA revised the NAAQS in part by replacing the TSP indicator for both the primary and secondary standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 μm ($PM_{10}$).

On July 18, 1997, the EPA made significant revisions to the PM NAAQS in several respects. While the EPA determined that the PM NAAQS should continue to focus on $PM_{10}$, EPA also determined that the fine and coarse fractions of $PM_{10}$ should be considered separately. Accordingly, on July 18, 1997, the EPA added a new indicator for fine particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm ($PM_{2.5}$), and continued to use $PM_{10}$ as the indicator for purposes of regulating the coarse fraction of $PM_{10}$. *See* 62 FR 38652.

On May 16, 2008, EPA finalized the ''Implementation of the New Source Review (NSR) Program for Particulate

Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR $PM_{2.5}$ Rule) to implement the 1997 $PM_{2.5}$ NAAQS, including changes to the NSR program. *See* 73 FR 28321. The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. Among other requirements, the 2008 NSR $PM_{2.5}$ Rule required states and sources to account for condensables in $PM_{2.5}$ emission limits.

The 2008 NSR $PM_{2.5}$ Rule contained an error in the regulations for PSD [1] and in the EPA's Emission Offset Interpretative Ruling.[2] This error was introduced in the definition of ''regulated NSR pollutant'' that was revised as part of the final rulemaking. The wording of that revised definition had the effect of requiring that PM emissions, $PM_{10}$ emissions, and $PM_{2.5}$ emissions—representing three separate size ranges or indicators of particles—must all include condensables. EPA did not intend in the 2008 NSR $PM_{2.5}$ Rule that the term ''particulate matter emissions'' be listed with ''$PM_{2.5}$ emissions'' and ''$PM_{10}$ emissions'' in requirements to include the condensable fraction of primary PM. Historically, for ''particulate matter emissions'' often only the filterable fraction had been considered for NSR purposes, consistent with the applicable New Source Performance Standards (NSPS) for PM and the corresponding compliance test method. On October 25, 2012, EPA promulgated a final rule [3] which revised the definition of ''regulated NSR pollutant'' to correct the error and remove the unintended new requirement on state and local agencies and the regulated community that ''particulate matter emissions'' must include condensables in all cases. EPA's October 25, 2012 action ensured that the originally-intended approach for regulating the three indicators for emissions of particulate matter under the PSD program was codified. Thus, ''$PM_{10}$ emissions'' and ''$PM_{2.5}$ emissions'' are regulated as criteria pollutants (that is, under the portion of the definition of ''regulated NSR pollutant'' that refers to ''[a]ny pollutant for which a national ambient air quality standard has been promulgated. . .'' and are required to include the condensable PM fraction emitted by a source. *See* 40 CFR 51.166(b)(49)(i) and 52.21(b)(50)(i). In contrast, ''particulate matter emissions'' is regulated as a non-criteria pollutant under the portion of the definition that refers to ''[a]ny pollutant that is subject to any standard promulgated under section 111 of the Act,'' where the condensable PM fraction generally is not required to be included in measurements to determine compliance with standards of performance for PM. *See* 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii).

Virginia submitted and EPA previously approved a SIP revision to address the provisions of the 2008 $PM_{2.5}$ NSR Rule which included the errant language relating to ''particulate matter emissions.'' *See* 79 FR 10377 (February 25, 2014). This direct final rulemaking action makes Virginia's PSD SIP consistent with EPA's original intent, as well as consistent with the corrected Federal requirements that only $PM_{10}$ and $PM_{2.5}$ consider condensables, unless a specific NSPS or SIP provision requires otherwise. Additional discussion on EPA's requirements to consider condensables for $PM_{10}$ and $PM_{2.5}$ for PSD is available in the preamble to EPA's October 25, 2012 rulemaking action, which is included in the docket for this action.

EPA notes that on January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit), in *Natural Resources Defense Council* v. *EPA* [4] (hereafter, *NRDC* v. *EPA*), issued a decision that remanded the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the 2008 NSR $PM_{2.5}$ Rule. The DC Circuit's remand of the 2008 NSR $PM_{2.5}$ Rule is relevant to this direct final rulemaking. As previously discussed, this rule promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). The DC Circuit found that EPA erred in implementing the $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The court ordered EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. However, as the requirements of subpart 4 only pertain to nonattainment areas, it is EPA's position that the portions of the 2008 NSR $PM_{2.5}$ Rule that address requirements for $PM_{2.5}$ in attainment and unclassifiable areas are not affected by the DC Circuit's opinion in *NRDC* v. *EPA.* Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 NSR $PM_{2.5}$ Rule in order to comply with the court's decision. Accordingly, EPA's approval of Virginia's SIP as to the PSD requirements promulgated by the 2008 NSR $PM_{2.5}$ Rule does not conflict with the DC Circuit's opinion.

## II. Summary of SIP Revision

This action amends the previously approved definition of ''regulated NSR pollutant'' under 9VAC5–80–1615 to be consistent with the Federal definition and requirements for condensable PM. Additionally, 9VAC5–80–1615(B) is revised to correct a minor typographical error (a regulatory citation to an incorrect section of the VAC). The revisions being approved were effective in the Commonwealth of Virginia on May 22, 2013.

## III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of revisions to the definitions under 9VAC5–80–1615 as described in Section II of this notice. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## IV. Final Action

EPA is approving VADEQ's July 25, 2013 submittal as a revision to the Virginia SIP. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 12, 2015 without further notice unless EPA receives adverse comment by May 13, 2015. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

[1] *See* 40 CFR 51.166 and 52.21.

[2] *See* 40 CFR part 51, appendix S.

[3] *See* 77 FR 65107 (October 25, 2012) (''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): Amendment to the Definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter'').

[4] *See* 706 F.3d 428 (D.C. Cir. 2013).

**V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code section 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

**VI. Statutory and Executive Order Reviews**

*A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by June 12, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action pertaining to Virginia's PSD program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: March 25, 2015.

**William C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for Section 5–80–1615 to read as follows:

**§ 52.2420 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

| State citation | Title/Subject | State effective date | EPA Approval date | Explanation [former SIP citation] |
|---|---|---|---|---|
| * | * | * | * | * |
| **9 VAC 5, Chapter 80 Permits for Stationary Sources [Part VIII]** | | | | |
| * | * | * | * | * |
| **Article 8 Permits—Major Stationary Sources and Major Modifications Located in Prevention of Significant Deterioration Areas** | | | | |
| * | * | * | * | * |
| 5–80–1615 | Definitions | 5/22/13 | 4/13/15 [Insert **Federal Register** Citation]. | Revised. Limited approval remains in effect. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2015–08417 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2014–0832; FRL–9925–33–Region 9]**

### Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District

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

**ACTION:** Direct Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Northern Sierra Air Quality Management District (NSAQMD or the District) portion of the California State Implementation Plan (SIP). The submitted SIP revision contains the District's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). The submitted SIP revision also contains negative declarations for volatile organic compound (VOC) source categories for the NSAQMD. We are approving the submitted SIP revision under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on June 12, 2015 without further notice, unless EPA receives adverse comments by May 13, 2015. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2014–0832, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will

be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** James Shears, EPA Region IX, (213) 244–1810, *shears.james@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

**Table of Contents**



## I. The State's Submittal

### *A. What document did the State submit?*

Table 1 lists the document addressed by this action with the date that it was adopted by the local air agency and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED DOCUMENT

| Local Agency | Document | Adopted | Submitted |
|---|---|---|---|
| NSAQMD ..... | 2007 Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) for Western Nevada County 8-Hour Ozone Non-Attainment Area (''2007 RACT SIP''). | 6/25/07 | 2/7/08 |

The 2007 RACT SIP became complete by operation of law on August 7, 2008 pursuant to CAA 110(k)(1)(B).

### *B. Are there other versions of this document?*

There is no previous submitted version of NSAQMD's 2007 RACT SIP.

### *C. What is the purpose of the RACT SIP submission?*

Volatile organic compounds (VOCs) and nitrogen oxides ($NO_X$) help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit enforceable regulations that control VOC and $NO_X$ emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as moderate or above require implementation of RACT for any source covered by a CTG document and any other major stationary source of VOCs or $NO_X$. The NSAQMD is subject to this requirement because it regulates western Nevada County, which is designated and classified as a subpart 2 moderate ozone nonattainment area for the 1997 8-hour ozone NAAQS (see 40 CFR 81.305). Therefore, NSAQMD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG stationary sources of VOCs or $NO_X$ in western Nevada County.

## II. EPA's Evaluation and Action

### *A. How is EPA evaluating the RACT SIP submission?*

NSAQMD regulates a nonattainment area classified as subpart 2 moderate for the 1997 8-hour ozone NAAQS (see 40 CFR 81.305). CAA Section 182(b)(2) and (f), as well as 40 CFR 51.912(a)(1) require that SIPs for ozone nonattainment areas classified as moderate or above require implementation of RACT for any source covered by a CTG document and any other major stationary source of VOCs or $NO_X$. Any stationary source that emits or has a potential to emit at least 100 tons per year (tpy) of VOCs or $NO_X$ in a moderate ozone nonattainment area is considered a major stationary source (see CAA sections 182(b(2)) and (f) and 302(j)). Where there are no existing sources covered by a particular CTG document or no other major stationary sources of VOCs or $NO_X$, states may, in lieu of adopting RACT requirements, adopt negative declarations certifying that there are no such sources in the relevant nonattainment area (see Memorandum from William T. Harnett to Regional Air Division Directors, (May 18, 2006), ''RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers'' page 7).

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Guidance and policy documents that we use to evaluate CAA section 182 RACT SIPs include the following:

1. ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2'' (70 FR 71612; November 29, 2005).
2. ''Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Dates''—Final Rule (69 FR 23858; April 30, 2004).
3. ''State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498; April 16, 1992).
4. Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations: Clarification to Appendix D of November 24, 1987 **Federal Register**, May 25, 1988, Revised January 11, 1990, U.S. EPA, Air Quality Management Division, Office of Air Quality Planning and Standards (''The Blue Book'').
5. Guidance Document for Correcting Common VOC and Other Rule Deficiencies, August 21, 2001, U.S. EPA Region IX (the ''Little Bluebook'').
6. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 55620, November 25, 1992) (''the $NO_X$ Supplement'').

7. Memorandum from William T. Harnett to Regional Air Division Directors, (May 18, 2006), ''RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers.''
8. RACT SIPs, Letter dated March 9, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) describing Region IX's understanding of what constitutes a minimally acceptable RACT SIP.
9. ''Final Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Classification of Areas That Were Initially Classified Under Subpart 1; Revision of the Anti-Backsliding Provisions To Address 1-Hour Contingency Measure Requirements; Deletion of Obsolete 1-Hour Standard Provision''—Final Rule (77 FR 28424; May 14, 2012).
10. ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology'', EPA (June 1992).
11. Beyond VOC RACT Requirements'', EPA (April 1995).
12. EPA's CTGs *http://www.epa.gov/glo/SIPToolkit/ctgs.html.*
13. CARB's emissions inventory database *http://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php*
14. NSAQMD, CARB and EPA Region IX databases of NSAQMD rules—NSAQMD: *http://myairdistrict.com/index.php?Itemid=71,* CARB: *http://www.arb.ca.gov/ridb.htm,* EPA: *http://epa.gov/region09/air/sips/index.html.*

*B. Does the RACT SIP submission meet the evaluation criteria?*

The 2007 RACT SIP includes three elements, as described further below:

1. Evaluations of VOC and $NO_X$ rules for sources subject to a CTG.
2. Negative declarations where there are no facilities subject to a CTG.
3. Negative declaration for major non-CTG sources of VOC or $NO_X$.

NSAQMD provided its 2007 RACT SIP for public comment prior to the public hearing for adoption. No written comments were received by the District. NSAQMD also supplemented 2007 RACT with various other submittals as described below.

1. Evaluations of VOC and $NO_X$ Rules for Sources Subject to a CTG

NSAQMD's 2007 RACT SIP referenced various VOC rules that apply to western Nevada County. Subsequent to its adoption of the 2007 RACT SIP on June 25, 2007, NSAQMD amended a number of these rules and submitted them to EPA for approval into the SIP. These submittals effectively supersede the 2007 RACT SIP with respect to Rules 213, 214, 215 and 228. The following rules were subsequently approved by EPA into the SIP: Rule 214 (78 FR 897, January 7, 2013), Rule 215 (76 FR 44493, July 26, 2011), Rule 227 (74 FR 56120, October 30, 2009), and Rule 228 (77 FR 47536, August 9, 2011). Rule 213 was rescinded by NSAQMD (April 25, 2011), and was incorporated into the SIP-approved Rule 214.

In our recent approvals of these rules, we found that the rules fulfilled RACT requirements. We are not aware of information suggesting that additional controls are needed to fulfill RACT since our approval of these rules. Therefore, we concur that NSAQMD implements has adopted RACT-level rules requirements for vapor recovery systems.

2. Negative Declarations Where There Are No Facilities Subject to a CTG

Table 2 of NSAQMD's 2007 RACT SIP lists not only CTGs, but also other documents relevant to establishing RACT at major sources. Negative declarations are only required for CTG source categories for which the District has no sources covered by the CTG. A negative declaration is not required for non-CTG source categories. Table 2 below lists the CTG source categories that remain after we excluded non-CTG documents from NSAQMD's 2007 RACT SIP Table 2. The District indicated it does not anticipate sources in these categories in the future. We searched CARB's emissions inventory database to verify there are no facilities in NSAQMD that might be subject to the CTGs listed below. We concur with the District's negative declarations.

On August 14, 2008 and May 17, 2011, CARB submitted NSAQMD's negative declarations for 10 CTGs issued or updated by EPA between 2006 and 2008. EPA approved these declarations on April 18, 2012 (77 FR 23130).

TABLE 2—NSAQMD NEGATIVE DECLARATIONS

| CTG Source category | CTG Reference document |
|---|---|
| Aerospace | EPA–453/R–97–004, Aerospace CTG and MACT. |
| Automobile and Light-duty Trucks, Surface Coating of | EPA–450/2–77–008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. |
| Cans and Coils, Surface Coating of | EPA–450/2–77–008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. |
| Flat Wood Paneling, Surface Coating of | EPA–450/2–78–032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling. |
| Gasoline Loading Terminals | EPA–450/2–77–026, Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals. |
| Graphic Arts—Rotogravure and Flexography | EPA–450/2–78–033, Control of Volatile Organic Emissions from Existing Stationary Sources, Volume III: Graphic Arts—Rotogravure and Flexography. |
| Large Appliances, Surface Coating of | EPA–450/2–77–034, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances. |
| Large Petroleum Dry Cleaners | EPA–450/3–82–009, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners. |
| Magnet Wire, Surface Coating for Insulation of | EPA–450/2–77–033, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire. |
| Metal Furniture Coatings | EPA–450/2–77–032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture. |
| Natural Gas/Gasoline Processing Plants Equipment Leaks. | EPA–450–83–007, Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. |
| Petroleum Liquid Storage in External Floating Roof Tanks. | EPA–450/2–78–047, Control of Volatile Organic Compound Emissions from Petroleum Liquid Storage in External Floating Roof Tanks. |
| Petroleum Refineries | EPA–450/2–77–025, Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.<br>EPA–450/2–78–036, Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment. |

TABLE 2—NSAQMD NEGATIVE DECLARATIONS—Continued

| CTG Source category | CTG Reference document |
|---|---|
| Pharmaceutical Products | EPA–450/2–78–029, Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products. |
| Pneumatic Rubber Tires, Manufacture of | EPA–450/2–78–030, Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires. |
| Polyester Resin | EPA–450/3–83–008, Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. |
| | EPA–450/3–83–006, Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment. |
| Shipbuilding/Repair | EPA–450/3–94–032, Shipbuilding/Repair. |
| Solvent Metal Cleaning | EPA–450/2–77–022, Control of Volatile Organic Emissions from Solvent Metal Cleaning. |
| Synthetic Organic Chemical Manufacturing | EPA–450/3–84–015, Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry. |
| | EPA–450/4–91–031, Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry. |
| Wood Furniture | EPA–453/R–96–007, Wood Furniture. |

3. Negative Declaration for Major Non-CTG Sources of VOC or $NO_X$

The 2007 RACT SIP included a negative declaration for major non-CTG sources of VOC and $NO_X$. EPA agrees that there are no major non-CTG sources of $NO_X$ or VOCs in the western Nevada County nonattainment area.

4. Conclusion

We find that NSAQMD's 2007 RACT SIP submission, including the negative declarations and the rule revisions that were SIP-approved after 2007, adequately demonstrate that NSAQMD's rules satisfy RACT for the 1997 8-hour ozone NAAQS. Our TSD has more information on our evaluation.

*C. EPA Recommendations To Strengthen the RACT SIP*

Our TSD describes additional revisions that we recommend for the next time NSAQMD modifies the rules.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted SIP revision because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same SIP revision. If we receive adverse comments by May 13, 2015, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 12, 2015. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on a specific provision of this SIP revision and if that provision may be severed from the remainder of the SIP revision, EPA may adopt as final those provisions of the SIP revision that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects using practical and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

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

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

Dated: February 12, 2015.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52 [AMENDED]

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

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(456) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(456) New and amended regulations for the following APCDs were submitted on February 7, 2008 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) Northern Sierra Air Quality Management District.

(*1*) Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Revision for Western Nevada County 8-Hour Ozone Non-Attainment Area as adopted on June 25, 2007.

■ 3. Section 52.222 is amended by adding paragraph (a)(9)(iii) to read as follows:

**§ 52.222 Negative declarations.**

(a) * * *

(9) * * *

(iii) EPA–453/R–97–004 Aerospace CTG and MACT; EPA–450/2–77–008 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks; EPA–450/2–78–032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling; EPA–450/2–77–026, Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals; EPA–450/2–78–033, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Graphic Arts—Rotogravure and Flexography; EPA–450/2–77–034 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances; EPA–450/3–82–009, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners; EPA–450/2–77–033 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire; EPA–450/2–77–032 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture; EPA–450–83–007, Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants; EPA–450/2–78–047, Control of Volatile Organic Compound Emissions from Petroleum Liquid Storage in External Floating Roof Tanks; EPA–450/2–77–025 Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds; EPA–450/2–78–036 Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment; EPA–450/2–78–029 Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products; EPA–450/2–78–030 Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires; EPA–450/3–83–008 Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; EPA–450/3–83–006 Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment; EPA–450/3–94–032, Shipbuilding/Repair; EPA–450/2–77–022, Control of Volatile Organic Emissions from Solvent Metal Cleaning; EPA–450/3–84–015 Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; EPA–450/4–91–031 Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry; EPA–453/R–96–007, Wood Furniture.

* * * * *

[FR Doc. 2015–08421 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R03–OAR–2014–0789; FRL–9925–94–Region 3]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Allentown Nonattainment Area to Attainment for the 2006 24-Hour Fine Particulate Matter Standard

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the Commonwealth of Pennsylvania's request to redesignate to attainment the Allentown Nonattainment Area (Allentown Area or Area) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS or standard). EPA has determined that the Allentown Area attained the 2006 24-hour $PM_{2.5}$ NAAQS and that it continues to attain the standard. In addition, EPA is approving, as a revision to the Pennsylvania State Implementation Plan (SIP), the Allentown Area maintenance plan to show maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS through 2025 for the Area. The maintenance plan includes

the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides ($NO_X$) mobile vehicle emissions budgets (MVEBs) for the Area for the 2006 24-hour $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. Furthermore, EPA is approving the 2007 base year emissions inventory, also included in the maintenance plan, for the Area for the 2006 24-hour $PM_{2.5}$ NAAQS. These actions are being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on April 13, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0789. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto at (215) 814–2182, or by email at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 5, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), formally submitted a request to redesignate the Allentown Area from nonattainment to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. Concurrently, PADEP submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and $NO_X$ MVEBs for the Area for the 2006 24-hour $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. PADEP also submitted a 2007 comprehensive emissions inventory that was included in the maintenance plan for the 2006 24-hour $PM_{2.5}$ NAAQS for $PM_{2.5}$, $NO_X$, sulfur dioxide ($SO_2$), volatile organic compounds (VOC), and ammonia ($NH_3$).

On February 4, 2015 (80 FR 6019), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed approval of Pennsylvania's September 5, 2014 request to redesignate the Allentown Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA also proposed approval of the associated maintenance plan as a revision to the Pennsylvania SIP for the 2006 24-hour $PM_{2.5}$ NAAQS, which includes the 2017 and 2025 for $PM_{2.5}$ and $NO_X$ MVEBs for the 2006 24-hour $PM_{2.5}$ NAAQS, which EPA proposed to approve for purposes of transportation conformity. In addition, EPA proposed approval of the 2007 emissions inventory to meet the emissions inventory requirement of section 172(c)(3) of the CAA.

The details of Pennsylvania's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

## II. Final Actions

EPA is taking final actions on the redesignation request and SIP revisions submitted on September 5, 2014 by the Commonwealth of Pennsylvania, through PADEP for the Allentown Area for the 2006 24-hour $PM_{2.5}$ NAAQS. First, EPA finds that the monitoring data demonstrates that the Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, and continues to attain the standard. Approval of this redesignation request will change the official designation of the Allentown Area from nonattainment to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. Second, EPA is approving Pennsylvania's redesignation request for the 2006 24-hour $PM_{2.5}$ NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for this standard. Third, EPA is approving the associated maintenance plan for the Allentown Area as a revision to the Pennsylvania SIP for the 2006 24-hour $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and $NO_X$ MVEBs submitted by Pennsylvania for the Allentown Area for transportation conformity purposes. In addition, EPA is approving the 2007 emissions inventory as meeting the requirement of section 172(c)(3) of the CAA for the standard.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this rulemaking action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this rulemaking action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rulemaking action, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rulemaking action relieves the Commonwealth of Pennsylvania of the obligation to comply with nonattainment-related planning requirements for the Area pursuant to part D of the CAA and approves certain emissions inventories and MVEBs for the Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this rulemaking action to become effective on the date of publication.

## III. Statutory and Executive Order Reviews

### *A. General Requirements*

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the redesignation request and maintenance plan and comprehensive emissions inventory for the Allentown Area for the 2006 24-hour $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects**

*40 CFR part 52*

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

*40 CFR part 81*

Air pollution control, National parks, Wilderness areas.

Dated: March 25, 2015.

**William C. Early,**

*Acting, Regional Administrator, Region III.*

40 CFR parts 52 and 81 are amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for 2006 24-Hour $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(e) * * *

(1) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * * | * * | * | * | * * |
| 2006 24-Hour $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory. | Allentown Area (Lehigh and Northampton Counties). | 9/5/14 | 4/13/15 [Insert **Federal Register** citation] | See § 52.2036(t) and § 52.2059(o). |

* * * * *

■ 3. Section 52.2036 is amended by adding paragraph (t) to read as follows:

**§ 52.2036 Base year emissions inventory.**

* * * * *

(t) EPA approves as revisions to the Pennsylvania State Implementation Plan the 2007 base year emissions inventory for the Allentown 2006 24-hour fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Pennsylvania Department of Environmental Protection on September 5, 2014. The emissions inventory includes emissions estimates that cover the general source categories of point, area, nonroad, and onroad sources. The pollutants that comprise the inventory are $PM_{2.5}$, nitrogen oxides ($NO_X$), volatile organic compounds (VOCs), ammonia ($NH_3$), and sulfur dioxide ($SO_2$).

■ 4. Section 52.2059 is amended by adding paragraph (o) to read as follows:

**§ 52.2059 Control strategy: Particular matter.**

* * * * *

(o) EPA approves the maintenance plan for the Allentown nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS submitted by the Commonwealth of Pennsylvania on September 5, 2014. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and $NO_X$ mobile vehicle emissions budgets (MVEBs) for Lehigh and Northampton Counties to be applied to all future transportation conformity determinations and analyses for the Allentown nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS.

ALLENTOWN AREA'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS IN TONS PER YEAR

| Type of control strategy SIP | Year | $PM_{2.5}$ | $NO_X$ | Effective date of SIP approval |
|---|---|---|---|---|
| Maintenance Plan | 2017 | 297 | 8,081 | April 13, 2015. |
| | 2025 | 234 | 5,303 | April 13, 2015. |

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 5. The authority citation for part 81 continues to read as follows:

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

■ 6. Section 81.339 is amended under the table entitled ''2006 24-Hour $PM_{2.5}$ NAAQS'' by revising the entries for ''Allentown, PA'' to read as follows:

**§ 81.339 Pennsylvania**

* * * * *

**PENNSYLVANIA—2006 24-Hour $PM_{2.5}$ NAAQS**

[Primary and secondary]

| Designated area | Designation [a] | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| * * | * | * | * * | * * |
| Allentown, PA: | | | | |
| Lehigh County | April 13, 2015 | Attainment | | |
| Northampton County | April 13, 2015 | Attainment | | |
| * * | * | * | * * | * * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015–08164 Filed 4–10–15; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 40

**[Docket No. OST–2015–0045]**

**RIN 2105–AE35**

## Use of Electronic Chain of Custody and Control Form in DOT-Regulated Drug Testing Programs

**AGENCY:** Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This action amends the U.S. Department of Transportation's (DOT) regulations to incorporate changes to the Substance Abuse and Mental Health Services Administration's (SAMHSA) chain of custody and control form (CCF) recently approved by the Office of Management and Budget (OMB). Specifically, this rulemaking expands the DOT's definition of the CCF to include both paper and electronic forms.

**DATES:** This final rule is effective on *April 13, 2015.*

**FOR FURTHER INFORMATION CONTACT:** For technical questions about this action, contact Mark Snider, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Ave. SE., Washington, DC 20590; telephone: (202) 366–3784; email: *ODAPCWebMail@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' In this instance, the DOT finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, is unnecessary, given that the electronic CCF (eCCF) has been approved for use by OMB and the DOT is bound by statute to follow SAMHSA's chain of custody and control procedures, to include use of an OMB-approved CCF.

### I. Authority for This Rulemaking

This rulemaking is promulgated pursuant to the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102–143, 105 Stat. 952, (Oct. 28, 1991)).

### II. Background

The Federal Workplace Drug Testing Program was established by Executive Order 12564 on September 15, 1986, and further mandated by Congress in section 503 of Public Law 100–71 (July 11, 1987). The Department of Health and Human Services (HHS), in developing the program, created a comprehensive set of standards for the Federal workplace drug testing program, including chain of custody procedures designed to ensure the integrity and security of specimens from the time the specimen is collected until the time the testing results are reported by the laboratory. To satisfy the congressional mandate, HHS first issued its mandatory guidelines on April 11, 1988, and in doing so, created the uniform CCF. The CCF is the tool by which agencies and

participants in the testing process are assured that the specimen collected is actually that of the tested employee. At this time, DOT developed its controlled substance program, following in large part the mandatory guidelines set forth by HHS.

On October 28, 1991, Congress passed OTETA, which codified the DOT's controlled substance testing program for its regulated entities and added a requirement to develop an alcohol testing program. In codifying the DOT program, Congress directed the Department to continue to ''incorporate the [HHS] scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing . . . strict procedures governing the chain of custody of specimens collected for controlled substances testing.'' See Pub. L. 102–143. As a result of this mandate, the DOT has required its regulated entities to use the CCF, as developed by HHS and approved by OMB. Historically, the CCF only has been available for use in paper form. On May 28, 2014, OMB approved the use of both a paper form CCF and an eCCF under the HHS Mandatory Guidelines. This final rule is necessary to expand the DOT's definition of the CCF to include the OMB-approved eCCF.

As noted above, the CCF is used to identify a specimen and to document its handling at the collection site. The paper CCF is a carbonless form consisting of 5 copies as follows:

| | |
|---|---|
| Copy 1 | Test Facility Copy |
| Copy 2 | Medical Review Officer Copy |
| Copy 3 | Collector Copy |
| Copy 4 | Employer Copy |
| Copy 5 | Donor Copy |

The eCCF requires the same collection of information and distribution of information to the relevant parties as the paper CCF requires. With the approved eCCF, HHS is not requiring collection of any new or different information. The only change from the paper CCF to the eCCF is the mechanism for collecting and transmitting the requisite information. Before implementing an eCCF, HHS-certified laboratories must provide a detailed plan and proposed standard operating procedures (SOPs) for SAMHSA to review and approve through SAMHSA's National Laboratory Certification Program (NLCP). The review of validation records, specimen records, SOPs, staff training records, and practices associated with the eCCF will be part of the NLCP inspection process. Once the eCCF is approved for use through the NLCP inspection process, it may be used in the DOT drug testing program, as well as the Federal Workplace Drug Testing Program. For more information regarding this approval process, please contact the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Division of Workplace Programs, National Laboratory Certification Program at (919) 541–7242, or via email at *nlcp@rti.org.*

It is important to note that electronic signatures are not otherwise acceptable in Part 40. The use of the eCCF will create an exception so that electronic signatures will be acceptable on these forms only and not throughout the rest of Part 40.

To ensure that the DOT regulations conform to SAMHSA's approved chain of custody and control procedures, the DOT is issuing this final rule to expand the current definition of the CCF in 49 CFR 40.3 to include all versions of the CCF as approved by OMB. We are amending § 40.45 to explain that the 5-part form can be a paper form or an approved electronic form, as long as the employer ensures that security and confidentiality concerns are addressed. The DOT is amending § 40.73 to require entities using an eCCF to follow the eCCF procedures approved by SAMHSA through the NLCP inspection process.

## III. Regulatory Analyses and Notices

Changes to Federal regulations must undergo several analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 601 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Finally, section (a)(5) of division H of the Fiscal Year 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002) requires DOT to conduct a Privacy Impact Assessment (PIA) of a regulation that will affect the privacy of individuals. This portion of the preamble summarizes the DOT's analyses of these impacts with respect to this final rule.

### *Executive Order 12866 and 13563 and DOT's Regulatory Policies and Procedures*

This final rule is not a significant regulatory action under Executive Order 12866 and 13563, as well as the Department's Regulatory Policies and Procedures. Its provisions make conforming amendments to include forms that have already been approved for use by OMB and that, by statute, the DOT is required to use. This rule does not propose any major policy changes or impose significant new costs or burdens. Rather, this rule is expected to reduce paperwork burdens for those entities that elect to use the new eCCF, as noted in SAMHSA's information collection request for the CCF that was approved by OMB. For more information, you may review SAMHSA's information collection request (ICR) 201307–0930–003 and supplemental information at *www.reginfo.gov.*

### *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (Public Law 96–354, ''RFA''), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify, and a regulatory flexibility analysis will not be required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This final rule does not require entities to use an

eCCF. Rather, it presents another means of compliance for all entities, as is currently permitted under the HHS mandatory guidelines. It does not create additional burdens, but may alleviate some paperwork burdens if entities opt to use the eCCF. Thus, in accordance with 5 U.S.C. 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

The PRA requires that the DOT consider the impact of paperwork and other information collection burdens imposed on the public. Because the DOT is obligated by statute to use whatever procedures and forms that SAMHSA adopts with respect to chain of custody and control for drug testing specimens, SAMHSA has accounted for the DOT burden in its recently approved information collection request. For more information regarding these burdens, you may review SAMHSA's ICR 201307–0930–003 and supplemental information at *www.reginfo.gov.*

*Privacy Act*

The DOT conducted a PIA of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). The assessment considers any impacts of the final rule on the privacy of information in an identifiable form. In addition to the PIA issued by HHS in conjunction with its ICR for the approved CCF, the DOT issued a supplemental PIA, further explaining how the eCCF may be used by DOT-regulated entities and the measures that have been put into place to ensure not only the integrity and security of the testing process, but the privacy of individuals subject to testing. Copies of the DOT's supplemental PIA, as well as SAMHSA's PIA, have been placed in the docket for this rulemaking.

**V. How To Obtain Additional Information**

*A. Rulemaking Documents*

An electronic copy of a rulemaking document may be obtained by using the Internet—1. Search the Federal Document Management System (FDMS) Portal (*http://www.regulations.gov*); or

2. Access the Government Publishing Office's Web page: *www.gpo.gov.*

**List of Subjects in 49 CFR Part 40**

Administrative practice and procedure, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

**The Amendment**

In consideration of the foregoing, the Department of Transportation amends part 40 of Title 49, Code of Federal Regulations, as follows:

## PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for part 40 continues to read as follows:

**Authority:** 49 U.S.C. 101, 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

■ 2. In § 40.3 revise the definition of ''chain of custody'' to read as follows:

**§ 40.3 What do the terms of this part mean?**

* * * * *

*Chain of custody.* The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.

* * * * *

■ 3. Amend § 40.45 by revising paragraph (a) and adding paragraphs (c)(5) and (f) to read as follows:

**§ 40.45 What form is used to document a DOT urine collection?**

(a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. You may view this form on the Department's Web site (*http://www.dot.gov/odapc*) or the HHS Web site (*http://www.workplace.samhsa.gov*).

* * * * *

(c) * * *

(5) When using an electronic CCF, you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.

* * * * *

(f) An employer who uses an electronic CCF must ensure that the collection site, the primary and split laboratories, and MRO have compatible systems, and that the employee and any other program participants in the testing process will receive a legible copy of the CCF.

■ 4. Amend § 40.73 by revising paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

**§ 40.73 How is the collection process completed?**

(a) As the collector, when using the paper CCF, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (7) of this section in the employee's presence.

* * * * *

(b) As a collector, when using other forms of the CCF as approved by the Office of Management and Budget, you must follow the procedures approved for that form.

(c) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case, within 24 hours or during the next business day.

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Issued under the authority provided in Pub. L. 102–143, in Washington, DC, on April 6, 2015.

**Anthony R. Foxx,**

*Secretary of Transportation.*

[FR Doc. 2015–08256 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 574 and 579

**[Docket No. NHTSA–2014–0084]**

**RIN 2127–AL54**

### Tire Identification and Recordkeeping

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation

**ACTION:** Final rule.

**SUMMARY:** The tire identification number (TIN), which must appear on virtually all new and retreaded motor vehicle tires sold in the United States, plays an important role in identifying which tires are subject to recall and remedy campaigns for safety defects and noncompliances. This final rule makes two amendments to the TIN. First, because NHTSA has run out of two-symbol codes to identify new tire plants, NHTSA is expanding the first portion of the TIN, previously known as

the manufacturer identifier, but more commonly referred to as a ''plant code,'' from two symbols to three for manufacturers of new tires. This amendment substantially increases the number of unique combinations of characters that can be used to identify individual manufacturers of new tires. Second, NHTSA is standardizing the length of the tire identification number to eliminate confusion that could arise from the variable length of tire identification numbers. This final rule standardizes the length of the TIN at 13 symbols for new tires and 7 symbols for retreaded tires, making it easier to identify a TIN from which a symbol is missing.

**DATES:** This final rule is effective on April 13, 2015.

*Petitions for reconsideration:* Petitions for reconsideration of this final rule must be received by May 28, 2015.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, you may contact Chris Wiacek, Office of Crash Avoidance Standards, by telephone at (202) 366–4801. For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992, and by fax at (202) 366–3820. You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In January 1971, the agency established a requirement in 49 CFR part 574 for a tire identification number (TIN) that must be labeled on one sidewall of each tire that is newly manufactured or retreaded.[1] The purpose of the TIN is to facilitate notification of purchasers of defective or noncompliant tires. Furthermore, the information contained in the TIN may be used by consumers to obtain information about the tire such as the actual manufacturer of the tire (in the case of a tire sold under a different brand) and the date of manufacture. Part 574 also provides for the registration of tires, including the collection of the TIN and the contact information of purchasers of tires, to enable manufacturers to notify tire owners of recalls.

From its adoption in 1971, the TIN has consisted of up to four groups of symbols. The first group of symbols identifies the manufacturer of the tire. Each individual tire plant has its own identifier; thus, one tire manufacturer may have multiple codes. Although part 574 has referred to this grouping as the manufacturer's identification mark, it may also be known informally as a ''plant code.'' For new tires, this code consists of two symbols, and for retreaded tires, the code consists of three symbols. This plant code is assigned to new manufacturers and retreaders when they contact NHTSA and provide contact information and information about what types of tires they are producing.

The second and third groupings provide information about the tire itself. The second grouping is up to two characters and identifies the tire size. Although the original TIN requirement had a list of tire sizes and two-symbol codes, the agency has since left it to manufacturers to determine their own codes and provide decoding information to NHTSA upon request. This change allowed manufacturers to create new tire sizes without NHTSA first having to modify its regulations to provide a tire size code.

The third grouping may be used at the manufacturer's option to provide any other significant characteristics of the tire. Except for cases in which a tire is manufactured for a brand name owner, the third grouping is not required. As with the second grouping, a manufacturer must maintain information regarding the code used and provide it to NHTSA upon request.

The fourth and final grouping is the date code, which identifies the week and year during which the tire was manufactured. Although this code was originally three symbols, it has been expanded to four symbols. The first two symbols have always represented the week of manufacture. For example, ''01'' signifies that the tire was manufactured during the first full week of the year, ''02'' signifies that the tire was manufactured during the second full week of the year, and so on. The third and fourth symbols (originally only one symbol) must be the last two digits of the year of manufacture.

The TIN is required to be marked on at least one sidewall of each tire that is manufactured or retreaded. Manufacturers must use one of 30 alphanumeric symbols in the TIN. Certain letters such as G, I, O, Q, S, and Z are not allowed to be used because of the potential difficulty differentiating one symbol from another (for example, the number 5 and the letter S).

Generally, the TIN must be molded into or onto one sidewall of the tire. However, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, which applies to radial tires for vehicles under 10,000 pounds GVWR, has an additional requirement that the other sidewall be labeled with either a full or partial TIN. A partial TIN excludes the date code and may also exclude any optional code, such as the third grouping of the TIN.

## II. July 2014 Notice of Proposed Rulemaking

On July 24, 2014, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) proposing two amendments to the TIN. First, because NHTSA was running out of two-symbol codes to identify new tire plants, NHTSA proposed to expand the plant code, from two symbols to three for manufacturers of new tires. Second, NHTSA proposed to standardize the length of the TIN 13 symbols for new tires and 7 symbols for retreaded tires.

We received 13 comments in response to the July 2014 NPRM. Oyatullohi Maddud, Tire Rack, the National Transportation Safety Board (NTSB), Specialty Tires of America (Specialty), Gillespie Automotive Safety Services (GASS), Kojin Kitao, the Japan Automobile Tyre Manufacturers Association (JATMA), Safety Research and Strategies (SRS), the Rubber Manufacturers Association (RMA), Zhongce Rubber Group Co. (Zhongce), the Government of Thailand (Thailand), the Tire and Rubber Association of Canada, and the Ministry of Trade, Industry, and Energy of the Republic of Korea (Korea). The comments are addressed in the following sections.

RMA also requested an extension of the comment period in order to gather additional information regarding the cost of converting existing molds to three-symbol plant codes and 13-symbol TINs. We agree with RMA's general assertion that additional time would be necessary in order for them to obtain this information. However, the agency is faced with the exhaustion of two-symbol plant codes and must begin issuing three-symbol plant codes immediately in order to allow new plants to open. In order to issue three-symbol plant codes immediately, RMA's petition to extend the comment period is denied. However, we believe that our approach in this final rule, in response to RMA's and others' comments, mitigates the need for extra time to respond to the NPRM.

[1] 36 FR 1196 (Jan. 26, 1971).

## III. Three-Symbol Plant Code

NHTSA, through its Office of Vehicle Safety Compliance, issues new tire and retreaded tire plant codes to manufacturers when they apply for them. For new tire manufacturers, who have a two-symbol code, the entire supply of 900 plant codes has been depleted.

In order to assign new plant codes, the agency has found it necessary to reissue previously issued, but currently unused plant codes. This shortage has arisen because of the increase over time in the number of tire manufacturers. This increase is projected to continue. However, a recent increase in the number of new plant code applications has completely depleted the supply of previously issued, but currently unused, plant codes. Without taking further action, the agency would be forced to refuse to assign new plant codes, which would make it impossible for new manufacturers to enter the tire market, or to assign identical plant codes to multiple manufacturers, which has the potential for substantial confusion and could impair tire recalls.

To enable the agency to issue new plant codes, the agency proposed to change the two-symbol plant code to a three-symbol plant code. We believe that this is the best long-term solution to the lack of supply of new manufacturer plant codes.

Oyatullohi Maddud, Tire Rack, GASS, RMA, Zhongce and Thailand agreed that NHTSA should begin issuing three-symbol plant codes to new tire manufacturers immediately upon running out of two-symbol codes.

NHTSA has run out of two-symbol plant codes. Therefore, it is necessary to issue this final rule to allow the issuance of three-symbol plant codes to new tire manufacturers. We are adopting the three-symbol plant code as proposed. For existing manufacturers with two-symbol plant codes, the agency will issue new three-symbol plant codes in place of each two-symbol plant code. For nearly all manufacturers, the agency will assign a ''1'' symbol in front of each existing two-symbol plant code.[2] For example, a manufacturer using two-symbol code ''AB'' will likely be assigned the three-symbol code ''1AB''.

## IV. Standardizing TIN Length

The length of a TIN is not currently standardized. The second and third groupings of the TIN are required to contain no more than two and four symbols, respectively. Thus, the total length of these two groupings may be between zero and six symbols, depending on whether the tire is new or retreaded, and also on decisions by the manufacturer regarding the inclusion of optional codes. The third grouping is optional for all but non-pneumatic tire manufacturers, non-pneumatic tire assembly manufacturers, and tires manufactured for a brand name owner. Based on all of the variations in TIN length allowed, a full TIN for new tires may be anywhere between 6 and 12 symbols (which would go up to 13 after NHTSA adopts a three-symbol plant code).

The nonstandard length of the TIN becomes more complicated by the TIN marking requirements in FMVSS No. 139. As mentioned above, FMVSS No. 139 requires a full TIN to be marked on one side of the tire and either a full TIN or a partial TIN on the other side of the tire. A partial TIN excludes the four-symbol date code and any optional code. Thus, a partial TIN may be as long as eight symbols (if a two-symbol size code is used and a four-symbol third grouping is used).

Because both a full TIN and partial TIN could potentially be eight symbols in length, it may not always be clear whether an eight-symbol TIN obtained from one side of a tire meeting the requirements of FMVSS No. 139 is a full TIN or a partial TIN. The last four symbols in a full TIN representing the week and year of manufacture are always numeric. Nevertheless, we do not expect that everyone who records TINs for purposes such as crash reports or consumer complaints is likely to know the requirements for the various groupings of the TIN.

The July 2014 NPRM proposed to standardize the length of a TIN for all tire manufacturers using the three-symbol plant code at 7 symbols for retreaded tires and 13 symbols for new tires. We believed that this would prevent any confusion regarding whether a TIN is a complete TIN or a partial TIN. The proposal allowed manufacturers that have previously been assigned a two-symbol plant code to continue to use the existing TIN grouping requirements until they begin using a three-symbol plant code. We expected that manufacturers to begin using both the three-symbol plant code and the 13-symbol TIN at the same time.

We received comments from JATMA, RMA, Thailand, and the Tire and Rubber Association of Canada regarding the length of the TIN. Tire Rack supported adopting a standardized-length TIN. The other commenters cited the development of a global technical regulation (GTR) on light vehicle tires. The length of the TIN in the adopted GTR is specified as 15 symbols, including an 8-symbol manufacturer code. The commenters were concerned that the 8-symbol manufacturer code in the GTR is different than the 6-symbol code specified in the NPRM. Zhongce questioned the need for the standardized six-symbol manufacturer's code. Zhongce stated that they currently use five symbols for the optional code and questioned the need to add an additional character in existing molds.

After the comment period closed, GTR No. 15 related to passenger car tires was adopted. A TIN is included in GTR No. 15. The TIN format in the GTR is nearly identical to the July 2014 NPRM, with one notable exception. Both the GTR and the NPRM include a three-symbol plant code and a four-symbol date code. However, the GTR has an eight-symbol manufacturer code, whereas the NPRM included a six-symbol manufacturer code. Thus, the total TIN length in the GTR is 15 symbols, instead of the 13 symbols in the NPRM.

We are not making any changes to the proposal related to these comments. Although the GTR was not mentioned in the NPRM, we were aware of the discrepancy between the then-draft GTR and the NPRM at the time of the NPRM, but chose to propose a shorter manufacturer code to minimize the cost transitioning to the new TIN format. Although an 8-symbol manufacturer code is included in the adopted GTR, we believe that a 6-symbol manufacturer code will reduce the costs of standardizing the length of the TIN. No tires currently sold have a TIN longer than 12 symbols. If we were to adopt a 15 symbol TIN, manufacturers would need to allocate space on the tire for at least three extra symbols (and possibly more). Based on the comments received from tire manufacturers regarding the expense of adding of at least one symbol to the TIN, we believe that the costs of adding at least three symbols to the TIN would be much higher. Therefore, we are not modifying the TIN length to expand the manufacturer code to eight symbols.[3]

Moreover, we cannot agree with Zhongce's suggestion to allow the use of shorter manufacturer codes, thereby making the length of the TIN nonstandard. Making all TINs using a three-symbol plant code 13 symbols

[2] NHTSA will directly contact any manufacturer whose three-symbol plant code is something other than a ''1'' in front of its existing two-symbol code.

[3] RMA notes the inconsistency between the GTR and the NPRM and suggests that NHTSA propose to amend the GTR to be consistent with our final rule. This suggestion is beyond the scope of this rulemaking; however, we plan to request that the GTR be amended to harmonize with this final rule.

long is necessary to ensure the identification of the manufacturer with the TIN. Existing TINs are up to 12 symbols long, but use two-symbol plant codes. If we allow manufacturers with three-symbol plant codes to use TINs that are 12 symbols or shorter, we will have no way of knowing whether the TIN uses a two-symbol or three-symbol plant code. Without knowing that, the manufacturer of the tire cannot be ascertained from the TIN. Thus, it is necessary for NHTSA to specify a 13-symbol TIN to accompany the three-symbol plant code.

**V. Lead Time**

In the July 2014 NPRM, we recognized that, for existing manufacturers currently using two-symbol plant codes, immediately requiring the use of a three-symbol plant code and standardized TIN length would impose additional costs with little benefit. The NPRM therefore proposed to make the use of the three-symbol plant code and standardized TIN length optional for existing manufacturers with two-symbol plant codes, beginning immediately upon issuance of a final rule implementing the proposal. NHTSA proposed that mandatory compliance with the use of the three-symbol plant code and 13-symbol TIN would be required beginning not sooner than five years after publication of a final rule implementing the proposal. NHTSA believed that five years would be sufficient lead time before manufacturers would be required to use a three-symbol plant code and 13-symbol TIN.

Several commenters objected to requiring existing manufacturers to use a three-symbol plant code on the basis of cost and inconvenience. JATMA and Korea asserted that existing plants should not be required to adopt three-symbol plant codes because of their concern about the cost and time needed to upgrade existing molds and because they did not believe that there was sufficient space between the certification symbol and a ''1'' that was inserted before the plant code in an existing mold. Thailand asserted that products produced using a two-symbol plant code should be allowed to continue to be produced using a two-symbol code because increasing the number of symbols would affect cost without improvement in quality. Specialty requested that limited production tires be excluded from any requirement to use a three-symbol plant code because of the cost of modifying those molds.

RMA requested that NHTSA provide additional lead time and further requested that the comment period by extended for RMA to provide additional information on how much lead time they believed would be necessary to minimize costs to the industry. RMA stated that requiring existing plants to convert to 13-symbol TINs imposed substantial burdens on manufacturers not using all of the currently optional portions of the TIN. RMA also stated that the agency was incorrect to assume that the average life of a mold is five years.

RMA suggested that, because NHTSA would soon exhaust the supply of two-symbol codes, NHTSA should go forward with the three-symbol manufacturer identifier and the standardized-length TIN, but consider a longer implementation period. In its comments, RMA and the Tire and Rubber Association of Canada suggested that a 10-year lead time is more appropriate. JATMA and Korea also asserted that a longer lead time was appropriate.

Because of the immediate need for three-symbol plant codes, NHTSA must go forward with a rule allowing the use of three-symbol plant codes. Moreover, to ensure that plant codes for new tires are recognizable, we are moving forward with a requirement that manufacturers who use a three-symbol plant codes use the 13-symbol TIN. NHTSA continues to believe that eventual standardization of TIN length is valuable for ensuring quick identification of the tire manufacturer, for the reasons discussed above. However, in light of the comments received, we are extending the lead time from five years to 10 years for existing plants to adopt the three-symbol plant code and standardized 13-symbol TIN.

NHTSA's proposed five-year lead time was based upon the assumption that the average life of a tire mold is five years. Past rulemakings related to tire labeling have offered five years of lead time or less.[4] Moreover, our assumption was partially based upon RMA's comments on the adoption of FMVSS No. 139 and an NPRM proposing upgrades to truck tire requirements.[5] However, the issues identified by the commenters suggest that the assumptions underlying NHTSA's assertion that manufacturers could replace or modify existing molds to use 13-symbol TINs with minimal costs may be outdated or incorrect.

Therefore, NHTSA has extended the lead time from the five years proposed in the NPRM to 10 years, as suggested by the commenters. We believe that this change, as well as others discussed below, will minimize the impact of this final rule on existing plants.

To estimate the total cost of a 10-year lead time, we have used RMA's estimate that 20,504 molds would need to be modified at an average cost per mold of $957 (valued in 2014 dollars).[6] We believe that RMA members represent approximately 62 percent of new tire production for the U.S. market and non-RMA members represent approximately 38 percent of new tire production for the U.S. market.[7] We have assumed that the 20,504 molds that RMA members are required to modify represent 62 percent of the total molds that will need to be modified as a result of this rule, and that non-RMA members will need to modify 12,612 molds in order to comply with this final rule. Thus, we believe that 33,116 molds will need to be modified at a total cost of approximately $31.7 million.

Although only some molds will need to be modified to comply with this final rule, we expect that the costs of this rule will be spread out over all tires sold, not just tires manufactured in the molds that must be modified. Based on the data provided by RMA in its comments regarding the rates at which molds will be retired over a 5–10 year period, we have used a linear regression to estimate that nearly all molds currently in use today will be retired within 13 years. Given an annual average tire production of approximately 300 million, we believe that approximately 3.6 billion new tires will be produced for the U.S. market during this 13-year period. We expect that the $31.7 million cost of modifying molds could be spread out over all tires produced in this 13-year period.[8] Thus, the average cost increase

[4] See 64 FR 36807 (Jul. 8, 1999) (four digit date code); 63 FR 28912 (May 27, 1998) (metric labeling on truck tires).

[5] See 67 FR 69600, 69608 (Nov. 18, 2002) (RMA comment that mold life expectancy is up to five years); Docket No. NHTSA–2010–0132–0018, at 4 (comments of RMA on truck tire NPRM stating that the average mold life for radial truck and bus tires is five years).

[6] We believe that $957 per mold represents a high estimate of the cost of modifying a mold. Some molds may be modified simply by inserting new screw-in plates or a similarly uncomplicated process at substantially less than $957 per mold. However, in order to provide a conservative cost estimate, we will assume the cost per mold estimated by RMA.

[7] See Factbook 2014—Summary ed., Rubber Manufacturers Association.

[8] We believe the costs can be spread out over such a long period, in part, because there is no gradual phase-in for existing plants. That is, all molds that need to be modified will not need to be modified until 2025. The only molds we expect to be modified during the first half of the 10-year lead time would be molds that are moved from one plant to another. Those molds would already require

of a tire as a result of this rule over the next 13 years is expected to be less than one cent ($0.009).[9]

**VI. Changes to Figures 1 and 2**

The July 2014 NPRM proposed minor changes to Figures 1 and 2 of 49 CFR 574.5. For example, the new proposed Figures 1 and 2 included a requirement for a 50 mm blank space following the date code. We received comments from JATMA, RMA, Zhongce, Thailand, the Tire and Rubber Association of Canada, and Korea objecting to this requirement. RMA and the Tire and Rubber Association of Canada also stated that some Canadian tire manufacturers use the 50 mm space following the TIN to display Canada's National Safety Mark, and argued that this proposed requirement represented a barrier to trade that was not justified by safety. RMA noted that this change was not discussed in the preamble to the NPRM. Zhongce and Thailand also argued that the 50 mm blank space requirement may unnecessarily cause difficulties in tire design. Korea suggested that a 20 mm space requirement may be more appropriate.

In light of the potential inconsistency between the proposed specification in Note 3 of Figure 1 that that there be a blank space of at least 50 mm (2 inches) after the date code and Canadian tire marking requirements, we have not included this specification in this final rule. Although we were concerned about the potential for confusing the date code with other information, we did not discuss this matter in the preamble of the NPRM and did not intend to propose it. Moreover, we have no data to suggest that any benefit to the public as a result of this change would be justified by the creation of a potential inconsistency with the Canadian tire labeling requirements.

Separately, RMA suggested that NHTSA remove the 6 mm space requirement between the DOT symbol and the beginning of the TIN. RMA also requested that NHTSA reduce the minimum height requirement for the TIN to 4 mm for all tires rather than only for tires with smaller sidewall areas. RMA stated that these changes would give manufacturers additional flexibility to modify existing molds to include a three-symbol plant code.

We are not adopting these suggestions in this final rule. We believe that the specified minimum space after the DOT symbol ensures that the TIN is distinguished from the certification symbol. Moreover, we believe that the 6 mm letter height (which is currently the requirement for all tires, including those with shorter sidewalls) ensures readability and that the exception for smaller letter height should only apply to tires with shorter sidewalls.

In contrast, Tire Rack suggested that the 6 mm minimum letter height size be maintained throughout the TIN, particularly the date code. Our response is that, for the tires for which the 6 mm minimum letter height requirement applies, that requirement applies to both the TIN and the certification symbol.

Tire Rack also suggested that condensed fonts can be difficult to distinguish and included attachments with specific examples. Tire Rack suggested that NHTSA specify the use of bold fonts and prohibit condensed and lightweight fonts. However, having examined the photographs submitted by Tire Rack, we believe that the letters used in condensed fonts can be distinguished and that specifying/prohibiting bold, condensed, or lightweight fonts is not necessary at this time.

Additionally, on the topic of fonts, we inadvertently proposed to modify Note 1 of Figures 1 and 2 regarding requests for the use of other fonts that are submitted to NHTSA. The proposal would have modified the language to specify that requests are submitted to the ''Administrator'' rather than the ''Administration.'' Historically, NHTSA has considered the use of other fonts to be a matter of legal interpretation decided by the Chief Counsel. It was not our intent in the NPRM to reserve this authority to the Administrator. In this final rule, we are specifying that a petition to use an alternate font is submitted to NHTSA.

RMA requested that NHTSA should continue to permit the use of print types that have previously been approved. Nothing in this rulemaking affects previously approved print types, although we have not attempted to list those types in this regulation.

Zhongce suggested that NHTSA remove the specification for font type, or alternatively standardize the height-width ratio of the font. Zhongce argued that the specified fonts are not pleasant looking and manufacturers will want to use other fonts. We have not made any change in response to these comments. The specified fonts (and others approved by NHTSA) were chosen or approved for the ease of distinguishing characters, and the specification of font type has not, to our knowledge, had any effect on tire customers' purchasing decisions. Moreover, although the regulation does not specify the height-width ratio, we believe that the specification of fonts inherently specifies a height-width ratio for the characters. That is, if a manufacturer varies the height-width ratio for a particular font, it may not be using the specified font.

Regarding the allowable fonts, we have discovered that the list of allowable fonts in Figures 1 and 2 has been inadvertently modified to specify that ''Future Bold, Modified Condensed'' or ''Gothic'' are the only two allowable fonts. However, the original font specification allowed four fonts: Futura Bold, Futura Modified, Futura Condensed, and Gothic. We have changed the location of the quotation marks and added commas to make clear in Figures 1 and 2 that there are four allowable fonts, not two.

Kojin Kitao requested three clarifications regarding Figures 1 and 2: (1) Whether the DOT symbol and the TIN, or the TIN alone, must be in the specified fonts; (2) whether the entire TIN can be laser etched on a tire as in the proposed Figures 1 and 2, or whether only the date code may be laser etched as specified in § 574.5(d)(1); and (3) clarification on the location of the certification symbol and TIN on certain tires where it appeared that proposed Figure 1 had duplicate language. First, although the proposal stated that both the certification symbol and the TIN must be in the specified fonts, the version of Figures 1 and 2 in this final rule applies the font requirement solely to the TIN. We did not discuss this change in the preamble and did not intend the font requirement to apply to the certification symbol. Second, we intended to allow only the date code to be laser etched on a tire as specified in § 574.5(d)(1). We have eliminated contrary language from Figures 1 and 2 suggesting that other information may be laser etched. Third, we recognize that the proposed language in Figures 1 and 2 regarding the location on the tire for the certification symbol and DOT code contains duplicate language, and we have corrected this duplication. These changes are reflected in this final rule.

Tire Rack included two additional suggestions in its comments. First, it requested that NHTSA standardize the location of the certification symbol by allowing it only to the left of the TIN. Tire Rack requested that NHTSA eliminate Option 2 as depicted in

some modification under the current requirements and we would reasonably expect that the additional modifications to those molds as a result of this rule could be done at a relatively low cost.

[9] We have not considered retreaders in this analysis because we believe that the process by which retreaders label the TIN on a tire does not require modification of molds. We expect the cost of any modifications that retreaders may be required to make as a result of this final rule to be negligible.

Figures 1 and 2, which allows the certification symbol to be located above or below the TIN. Tire Rack observed that it had not seen any tires using Option 2 and believes that its use in the future could only cause confusion. Second, Tire Rack suggested that the branding of TINs on tires should be limited to smooth locations on the sidewall and be prohibited from being branded over multiple background surfaces.

We have not adopted these suggested changes. It was not our intent in this rulemaking to make substantive changes to the labeling of the TIN on the tire, other than to accommodate a longer plant code and TIN, and we consider these comments to be outside of the scope of this rulemaking. Moreover, we are concerned that these changes would eliminate flexibility for manufacturers without necessarily improving the ability of the TIN to be quickly understood in order to facilitate safety recalls.

Zhongce and GASS also identified errors in the pictures depicted in Figures 1 and 2. Specifically, some of the dimension lines did not line up with the dimensioning arrows. These errors have been corrected in this final rule.

We received suggestions from GASS and Tire Rack to specify required spacing between the three groupings of symbols of the TIN. We have not adopted this suggestion, because we are concerned that it will eliminate a cost-effective option for converting existing tire molds to a 13-symbol TIN. RMA has suggested that the modification of existing molds that are transferred to new plants will not simply involve the insertion of a ''1'' in front of the TIN. A mandatory minimum space between the groupings could prevent manufacturers from placing symbols between the existing groupings in order to use 13-symbol TINs on existing molds. We do not seek to impose costs unnecessarily; if this is a cheaper approach to achieve a clearly legible 13-symbol TIN, we would want manufacturers to be able to take advantage of it.

## VII. Other Suggested Changes and Technical Amendments

NTSB and SRS [10] commented that the agency should alter the TIN to change the format of the date code. SRS requested that NHTSA use a non-coded date of manufacture. Currently, the last four numbers represent the week and year of manufacture of a tire. The commenters did not specify, however, how NHTSA should require the date of manufacture to be presented on the tire.

Given that we did not propose any changes to the date code portion of the TIN, nor did we discuss or request comment on any potential changes to the date code, such a change may be beyond the scope of this rulemaking. Even if it were in scope, however, we do not believe a change to the date code is necessary for consumers to determine when their tires were manufactured. NHTSA's tire consumer Web site, *http://www.safercar.gov/tires/index.html,* explains in several places how to find and interpret the date code. Furthermore, a person should easily be able to determine the location of the date of manufacture on a tire is located either by querying an internet search engine or by asking a tire dealer.

NTSB and Tire Rack suggested that the use of partial TINs on some tires has not allowed consumers to have necessary information about their tires and requested that full TINs be required on both sides of a tire. This suggestion is beyond the scope of this rulemaking. We did not discuss or propose any changes to the placement of the TIN on one or both sidewalls.

NTSB also suggests that NHTSA enhance the usability of TIN coding by requiring that any coding used by manufacturers be reported to NHTSA and be made public. NTSB particularly notes that the manufacturer, brand name, model, size, and date of manufacture be made available. We are not making the suggested changes. The information referenced by NTSB is already required to be marked on the sidewall of any tire certified to FMVSS requirements. We do not believe that safety would be improved by requiring this information to be additionally included in the TIN itself.

GASS stated that in the first sentence of proposed § 574.5(a)(3) specifying marking requirements for non-pneumatic tires, the agency should specify that, instead of saying the TIN has to be placed ''onto one side of'' the tire, the agency should specify that it be placed ''onto at least one side of'' the tire. GASS reasoned that this change would be consistent with requirements for other types of tires. We agree, and we have made this suggested change.

GASS raised other technical issues that we have not adopted. First, GASS suggested that proposed § 574.5(b)(1) and (b)(3) be modified to make explicit references to Figures 1 and 2, as we have done in § 574.5(b)(2). We do not believe this change is necessary. Second, GASS suggested that the list of authorized symbols in § 574.5(f) has the letter ''I'' instead of the number ''1''. This is not correct. The number ''1'' was used in the NPRM. Third, GASS suggested that the list be modified to make explicit notations of the symbols that are letters and those that are numerals. We do not believe this change is necessary because the context in which the information is presented (alphabetical and numerical order) makes clear which symbols are letters and which are numbers.

RMA stated that in proposed § 574.5(a)(4) regarding the labeling of tires manufactured for mileage-contract purchasers, NHTSA incorrectly converted 0.25 inches into 13 millimeters rather than 6 millimeters. We agree that this conversion was incorrect. We have included the correct metric conversion in this final rule.

Finally, we sought comment on whether it is necessary to make any technical amendment to any of the tire labeling regulations in light of the proposed changes. RMA suggested several other technical amendments that were necessary. First, RMA suggested that NHTSA amend S5.5.1(b) of FMVSS No. 139, which includes language that allows optional codes to be excluded from partial TINs allowed on one sidewall of a tire. However, this final rule does not completely eliminate optional codes. Existing plants with two-symbol plant codes will be allowed to continue to use the old TIN format. Thus, it would be premature to remove the reference to optional codes in FMVSS No. 139.

Second, RMA stated that the Early Warning Reporting (EWR) regulations in 49 CFR 579.26 contain three references that should be corrected. First, the general provisions specify that manufacturers located in the United States may report ''the two-character DOT alphanumeric code'' identifying the production plant. In addition, paragraphs (a) and (d) contain references to ''tire type codes'' which, under the new TIN format, would be the manufacturer's code. We agree that 49 CFR 579.26 requires technical corrections for consistency with the changes to part 574, and have included RMA's suggested technical corrections in this final rule.[11]

[10] SRS also raised other matters in its comments. However, none of those matters are related to this rulemaking.

[11] RMA also provided a list of non-regulatory changes that RMA believes are necessary to accommodate this final rule. RMA included suggested changes to the instructions for EWR reporting, the templates for EWR reporting, and potential changes to the Artemis database system. We will consider whether the changes to the EWR reporting instructions and templates are necessary. We believe that the Artemis database system is presently capable of accommodating three-symbol plant codes.

## VIII. Rulemaking Analyses and Notices

### *A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined not to be significant under the Department's regulatory policies and procedures. The agency has further determined that the impact of this proposal is so minimal as to not warrant the preparation of a full regulatory evaluation.

This final rule will impose costs upon some existing tire manufacturers. New tire manufacturers would be issued three-symbol plant codes immediately and would be required to use the standardized 13-symbol TIN. For these new manufacturers or existing manufacturers opening new plants, this final rule will impose at most negligible costs. Manufacturers constructing new molds for a new plant should be able to comply with the new TIN requirements at no additional cost. For existing plants, new tire manufacturers will be required to modify any molds still in service in 10 years to accommodate a three-symbol plant code and a 13-symbol TIN. As discussed in more detail in section V, above, we expect that, for existing plants, this final rule will result in a one-time cost of approximately $31.7 million to modify molds to accommodate a three-symbol plant code and a 13-symbol TIN. We estimate that this cost could be spread out over all tires produced over a 13-year period, resulting in an increase in cost per tire of less than one cent.

We do not believe that the safety benefits of this final rule can be expressly quantified, but we anticipate that these amendments would benefit the public in two ways. First, without expanding the plant code to three characters, the agency would need either to stop issuing new plant codes or to issue identical codes to multiple manufacturers. Either of these approaches could lead to confusion in the identification of the manufacturer of a tire, particularly those tires that are manufactured for another brand name owner. Second, the standardization of the TIN length eliminates the potential for confusion regarding whether a TIN is a full TIN or a partial TIN, which may assist consumers with identifying whether their tires may be subject to recall and may prevent crash investigators from recording partial TINs rather than full TINs on their reports.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule would directly impact manufacturers and retreaders of tires for use on all motor vehicles. Although we believe many manufacturers affected by this final rule are considered small businesses, we do not believe this final rule will have a significant economic impact on those manufacturers. We expect that many changes that need to be made by manufacturers as a result of this final rule be done during the normal mold replacement cycle at no additional cost to manufacturers. The new tire manufacturers that would bear the costs of this rule as discussed in section V, above, are not small businesses. Although some retreaders are likely small businesses, we believe that they can make the modifications required by this final rule without incurring significant costs. The process by which retreaders label tires with TINs is different than for new tire manufacturers. Retreaders do not label TINs on tires using tire molds; rather, they use smaller, less expensive means for labeling tires. We do not believe that this final rule would cause retreaders to modify molds, and we believe that any modifications to TIN labeling methods necessary to comply with this rule could be made at minimal cost.

### *C. Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency expects that general principles of preemption law would operate so as to displace any conflicting State law or regulations.

### *D. Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

*E. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this final rule.

*F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this final rule.

*G. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

*H. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

*I. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*J. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**List of Subjects**

*49 CFR Part 574*

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

*49 CFR Part 579*

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR parts 574 and 579 as follows:

## PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

■ 1. Revise the authority citation for part 574 to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Revise §§ 574.5 and 574.6 to read as follows:

### § 574.5 Tire identification requirements.

(a) *Tire identification number (TIN) labeling requirement*—(1) *New tires.* Each new tire manufacturer must conspicuously label on one sidewall of each tire it manufactures, except non-pneumatic tires or non-pneumatic tire assemblies, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a TIN consisting of 13 symbols and containing the information set forth in paragraphs (b)(1) through (b)(3) of this section. NOTE: The Federal Motor Vehicle Safety Standards may have more specific TIN marking requirements for some tires. See 49 CFR part 571.

(2) *Retreaded tires.* Each tire retreader must conspicuously label at least one sidewall of each tire it retreads by permanently molding or branding into or onto the sidewall, in the manner and location specified by Figure 2, a TIN consisting of seven symbols and containing the information set forth in paragraphs (b)(1) and (b)(3) of this section.

(3) *Non-pneumatic tires and non-pneumatic tire assemblies.* Each manufacturer of a non-pneumatic tire or non-pneumatic tire assembly must permanently mold, stamp, or otherwise permanently mark into or onto at least one side of the non-pneumatic tire or non-pneumatic tire assembly a TIN consisting of 13 symbols and containing the information set forth in paragraphs (b)(1) through (b)(3) of this section.

(4) *Tires for mileage-contract purchasers.* Manufacturers or retreaders of tires exclusively for mileage-contract purchasers may, instead of meeting any other requirements of this section, permanently mold into or onto the tire sidewall in lettering at least 6 mm (0.25 inch) high the phrase ''for mileage contract use only''.

(5) *Optional phase-out of two-symbol plant code.* NHTSA will assign to tire manufacturers who were previously assigned a plant code consisting of two symbols a new three-symbol plant code to replace each two-symbol plant code. A manufacturer may continue to use a previously assigned two-symbol plant code until April 13, 2025. Manufacturers who use a two-symbol plant code must comply with paragraph

(g) of this section in lieu of the requirements in paragraph (b) of this section. Retreaders may also optionally comply with paragraph (g) of this section in lieu of paragraph (b) of this section until April 13, 2025.

(b) *TIN content requirements*—(1) *Plant code.* The plant code, consisting of three symbols, must be the first group of the TIN. The plant code represents the identity of the new tire manufacturer or retreader. The plant code is assigned to the manufacturer or retreader by NHTSA upon request. See § 574.6.

(2) *Manufacturer's code.* The manufacturer's code, consisting of six symbols, is the second group of the TIN for all new tires, but it cannot be used for retreaded tires. The manufacturer's code must be located between the plant code and the date code as shown in Figure 1. For new tires, the manufacturer's code may be used as a descriptive code for the purpose of identifying significant characteristics of the tire or to identify the brand name owner. For a new non-pneumatic tire or a non-pneumatic tire assembly, the manufacturer's code must identify the non-pneumatic tire identification code. Each manufacturer must maintain a detailed record of each manufacturer's code it uses with the corresponding tire size, tire characteristic, brand name owner, and non-pneumatic tire identification code as applicable and their respective meanings, which it must provide to NHTSA upon request.

(3) *Date code.* The date code, consisting of four numerical symbols, is the final group. The date code must identify the week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include no more than six days of the following year. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture. For example, 0109 means the tire was manufactured in the first full calendar week of 2009, or the week beginning on Sunday, January 4, 2009, and ending on Saturday, January 10, 2009. The date code must be positioned as shown in Figures 1 or 2 for new tires and retreaded tires, respectively.

(c) *Retreaded tire mark.* The symbol ''R'' must be used to identify retreaded tires, and must be marked at the time of TIN marking in a location specified in Figure 2. The ''R'' is not part of the TIN.

(d) *Method of marking.* (1) At the option of the manufacturer or retreader, the information contained in paragraph (b)(3) of this section may, instead of being permanently molded, be laser etched into or onto the sidewall in the location specified in Figures 1 or 2, respectively, during the manufacturing process of the tire and not later than 24 hours after the tire is removed from the mold.

(2) The labeling for a non-pneumatic tire or a non-pneumatic tire assembly must be in the manner specified in Figure 1 and positioned on the non-pneumatic tire or non-pneumatic tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of the non-pneumatic rim or wheel center member designated for use with that non-pneumatic tire in S4.4 of Standard No. 129 (49 CFR 571.129).

(e) *The DOT symbol.* (1) The DOT symbol constitutes a certification that the marked tire conforms to an applicable Federal Motor Vehicle Safety Standard.

(2) If required, a manufacturer or retreader must place the DOT symbol as shown and positioned relative to the TIN in Figure 1 for new tires and as shown in Figure 2 for retreaded tires.

(3) The DOT symbol must not appear on tires to which no Federal Motor Vehicle Safety Standard is applicable, except that retreaders of tires for use on motor vehicles other than passenger cars may, prior to retreading, remove the DOT symbol from the sidewall or allow it to remain on the sidewall, at the retreader's option.

(f) *Authorized symbols.* The only symbols that manufacturers and retreaders are allowed to use in the tire identification number are: A, B, C, D, E, F, H, J, K, L, M, N, P, R, T, U, V, W, X, Y, 1, 2, 3, 4, 5, 6, 7, 8, 9, and 0.

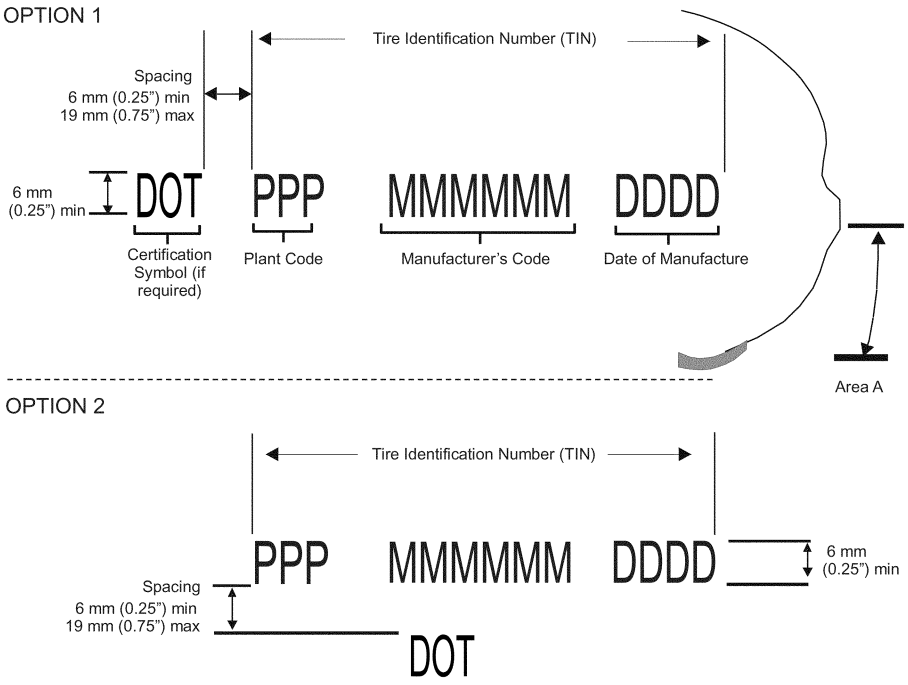
(g) *Old TIN content requirement.* The following requirements are applicable to tire manufacturers who were previously assigned two-symbol plant codes by NHTSA and to retreaders. A new tire manufacturer who continues to use a previously assigned two-symbol plant code in place of a new three-symbol plant code and a retreader may optionally comply with this paragraph instead of paragraph (b) of this section until April 13, 2025.

(1) *First grouping.* The plant code, consisting of two symbols, must be the first group of the TIN. The plant code represents the identity of the new tire manufacturer and was previously assigned to the manufacturer by NHTSA.

(2) *Second grouping.* For new tires, the second group, consisting of no more than two symbols, must be used to identify the tire size. For a non-pneumatic tire or non-pneumatic tire assembly, the second group, consisting of no more than two symbols, must be used to identify the non-pneumatic tire identification code. For retreaded tires, the second group, consisting of no more than two symbols, must identify the retread matrix in which the tire was processed or a tire size code if a matrix was not used to process the retreaded tire. Each new tire manufacturer and retreader must maintain a record of each symbol used, with the corresponding matrix or tire size, which it must provide to NHTSA upon request.

(3) *Third grouping.* The third group, consisting of no more than four symbols, may be used at the option of the manufacturer or retreader as a descriptive code for the purpose of identifying significant characteristics of the tire. However, if the tire is manufactured for a brand name owner, one of the functions of the third grouping must be to identify the brand name owner. Each manufacturer or retreader who uses the third grouping must maintain a detailed record of any descriptive brand name owner code used, which it must provide to NHTSA upon request.

(4) *Fourth grouping.* The date code, consisting of four numerical symbols, is the final group. The date code must identify the week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include no more than six days of the following year. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture. For example, 0109 means the tire was manufactured in the first full calendar week of 2009, or the week beginning on Sunday, January 4, 2009, and ending on Saturday, January 10, 2009. The date code must be positioned as shown in Figures 1 or 2 for new tires and retreaded tires, respectively.




## Notes

1. The TIN shall be in "Futura" Bold, Modified, or Condensed or "Gothic" characters. Other print types will be permitted if approved by NHTSA. The certifying symbol and the TIN shall be at least 6 mm in height and permanently molded 0.51 mm (0.020") to 1.02 mm (0.040") deep, measured from the surface immediately surrounding the symbols into or onto the tire at the indicated location on one side. As an option, the information contained in paragraph (b)(3) may also be laser etched in the same location to a depth of 0.25 mm (0.010") to 1.02 mm (0.040") consistent with the requirements of paragraph (d)(1). For tires with a cross section of 152 mm (6 inches) or less or with a bead diameter of 330 mm (13 inches) or less, the height of the characters may be 4 mm (0.156 inches) or greater.

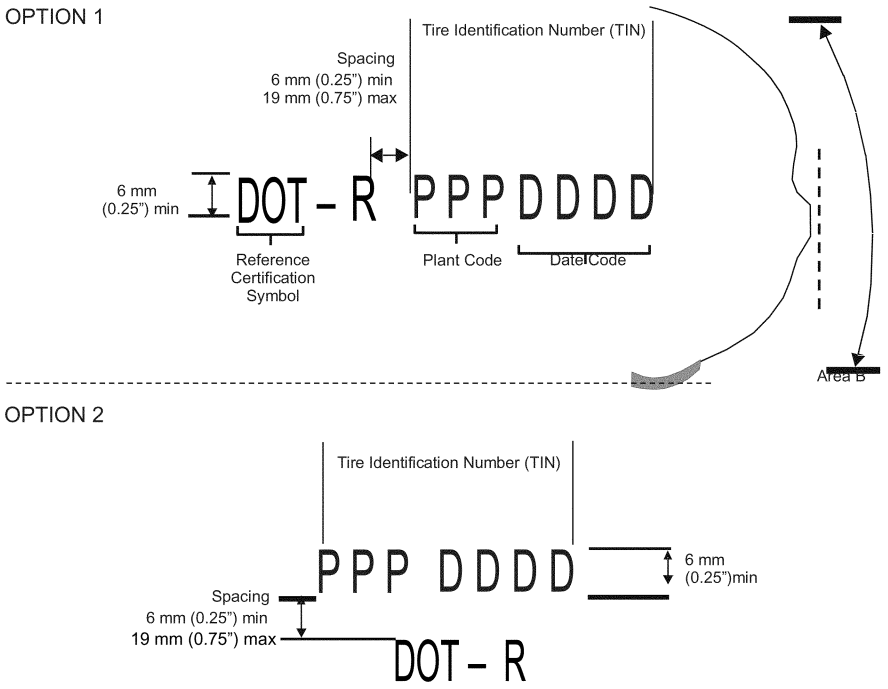
2. The certification symbol is not part of the TIN and may only be marked by the manufacturer for tires it has certified to a Federal Motor Vehicle Safety Standard. The DOT symbol may be located to the left of TIN, or it may be wholly located above or below the Manufacturer's code. The spacing between the DOT symbol and the TIN shall be no less than 6 mm (0.25 inch) and no more than 19 mm (0.75 inch).

3. Groups of symbols in the TIN shall be in the order and number of symbols indicated, see Option 1 and Option 2, above. Deviation from the straight line arrangement will be permitted if required to conform to the curvature of the tire.

4. Locate the certification symbol and the TIN in the lower segment of one sidewall between the maximum section width and bead (Area A), so that data will not be obstructed by rim flange, unless maximum section width falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and one-half the distance from the bead to the shoulder so that the data will not be obstructed by the rim flange.

5. Manufacturers who were previously assigned two-symbol plant codes may continue to use two-symbol plant codes in accordance with the requirements of paragraph (g). For those tires, the two-symbol plant code is followed by a size code that is up to two symbols in length, a tire type code that is up to four symbols in length, and the four-symbol date code.

Figure 1: Tire Identification Number (TIN) for New Tires




Notes

1. The TIN shall be in "Futura" Bold, Modified, or Condensed or "Gothic" characters. Other print types will be permitted if approved by NHTSA. The DOT symbol, the TIN, and the "R" shall be permanently molded 0.51 mm (0.020") to 1.02 mm (0.040") deep, measured from the surface immediately surrounding the symbols into or onto the tire at the indicated location on one side. As an option, the information contained in paragraph (b)(3) may be laser etched in the same location to a depth of 0.25 mm (0.010") to 1.02 mm (0.040") consistent with the requirements of paragraph (d)(1).

2. The "DOT" symbol is not part of the TIN and may only be marked onto tires that have been certified to a federal motor vehicle safety standard. The "R" symbol is not part of the TIN, but shall be marked by the retreader when the TIN is marked on the retreaded tire. The "R" may be located to the left of the TIN or it may be located above or below the TIN no less than 6 mm (0.25 inch) and not more than 19 mm (0.75 inch). The "DOT" symbol, when appropriate to mark, shall prefix the "R" by no less than 6mm (0.25 inch) and not more than 19 mm (0.75 inch). When marked above or below the TIN, the "DOT" symbol, when appropriate, the "R" symbol shall be wholly located above or below the TIN.

3. Groups of symbols in the TIN shall be in the order and number of symbols indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire. Locate the certification symbol (if applicable), the "R", and the TIN in Area B, but not on the scuff ribs of the sidewall.

4. The retreaded tire TIN is comprised of the three character plant code followed by the four numerical character date code.

5. Retreaders may optionally use older TIN requirements specified in paragraph (g). These requirements specify, between the plant code and the date code, up to two symbols specifying the retread matrix or tire size code and up to four symbols for the tire type code.

Figure 2: Tire Identification Number (TIN) for Retreaded Tires

**§ 574.6 How to obtain a plant code.**

To obtain a plant code required by § 574.5(b)(1), each manufacturer of new or retreaded pneumatic tires, non-pneumatic tires, or non-pneumatic tire assemblies must apply in writing to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SW., Washington, DC 20590, identify itself as a tire manufacturer or retreader, and furnish the following information:

(a) The name, or other designation identifying the applicant, and its main office address;

(b) The name, or other identifying designation, of each individual plant operated by the manufacturer and the address of each plant, if applicable;

(c) The name, or other identifying designation, of the corporate owner, if applicable, of each plant;

(d) The email addresses, phone numbers, and fax numbers for each person or corporation listed, including the main office; and

(e) The type of tires manufactured at each plant, *e.g.,* pneumatic tires for passenger cars, buses, trucks, or motorcycles; pneumatic retreaded tires; or non-pneumatic tires or non-pneumatic tire assemblies.

Note to § 574,6: Additional requirements for new tire manufacturers may be applicable. See 49 CFR parts 551 and 566.

## PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 3. The authority citation for part 579 continues to read as follows:

**Authority:** 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

■ 4. Amend § 579.26 by:
■ a. Revising the fifth sentence of the introductory text;
■ b. Revising the first sentence of paragraph (a); and
■ c. Revising the second sentence of paragraph (d).

The revisions read as follows:

**§ 579.26 Reporting requirements for manufacturers of tires.**

* * * For purposes of this section, the two- or three-character DOT alphanumeric code for production plants located in the United States assigned by NHTSA in accordance with §§ 574.5 and 574.6 of this chapter may be used to identify ''plant where manufactured.'' * * *

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the tire line, the tire size, the tire type code or manufacturer's code, the SKU, the plant where manufactured, whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the production year, the cumulative warranty production, and the cumulative total production through the end of the reporting period. * * *

* * * * *

(d) *Common green tire reporting.* * * * For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes or manufacturer's code, SKU numbers, brand names, and brand name owners.

Issued on April 3, 2015 in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

**Mark R. Rosekind,**

*Administrator.*

[FR Doc. 2015–08418 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 150227200–5347–02]**

**RIN 0648–BE79**

## Fisheries Off West Coast States; West Coast Salmon Fisheries; Management Reference Point Updates for Three Stocks of Pacific Salmon

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to update management reference point values for Southern Oregon coastal Chinook salmon, Grays Harbor fall Chinook salmon, and Willapa Bay natural coho, as recommended by the Pacific Fishery Management Council (Council) for use in developing annual management measures beginning in 2015.

**DATES:** This final rule is effective April 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Peggy Mundy at 206–526–4323.

**SUPPLEMENTARY INFORMATION:**

### Background

The Council manages West Coast ocean salmon fisheries under the Pacific Coast Salmon Fishery Management Plan (FMP). Over the course of two Council meetings (November 2014 and March 2015), the Council adopted management reference point values for three stocks of Pacific salmon: Southern Oregon coastal Chinook salmon, Grays Harbor fall Chinook salmon, and Willapa Bay natural coho. The management reference points, as described in the proposed rule (80 FR 14066, March 18, 2015), include: Conservation objective (a value unique to the FMP, generally an annual spawning escapement goal), the fishing mortality rate expected to result in maximum sustainable yield ($F_{MSY}$), MSY spawner abundance ($S_{MSY}$), minimum stock size threshold (MSST), and maximum fishery mortality threshold (MFMT, generally equal to $F_{MSY}$). For one stock that was added to the FMP under Amendment 16, Willapa Bay natural coho, the Council also confirmed the formula for determining the annual catch limit (ACL), as required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The proposed rule was developed based on Council recommendations from the November 2014 Council meeting. At that time, the Council had not explicitly adopted all of the management reference point values; therefore, NMFS proposed adopting some of the values pursuant to NMFS' independent rulemaking authority (18 U.S.C. 1855(d)), and those values were described in the proposed rule. The Council took action at the March 2015 meeting to adopt the remaining management reference point values. The reference point values being implemented by this final rule are based on the best available science developed through the Council's 2014 methodology review. They were recommended to the Council by the Salmon Technical Team, and were reviewed and endorsed, to the extent appropriate, by the Scientific and Statistical Committee. The reference point values being implemented are presented in Table 1.

TABLE 1—UPDATED MANAGEMENT REFERENCE POINTS ADOPTED BY THE COUNCIL AND IMPLEMENTED IN THIS FINAL RULE

| Reference point | Southern Oregon coastal Chinook | Willapa Bay natural coho | Grays Harbor fall Chinook |
|---|---|---|---|
| FMP Conservation Objective (escapement). | 41,000 (measured at Huntley Park). | 17,200 | 13,326. |
| $S_{MSY}$ (escapement) | 34,992 | 17,200 | 13,326. |
| MSST (escapement) | 20,500 (measured at Huntley Park). | 8,600 | 6,663. |
| MFMT | 54 percent | 74 percent | 63 percent. |
| ACL Definition | Not applicable | Based on $F_{ABC}$ and annual ocean abundance, $F_{ABC}$ is $F_{MSY}$ reduced by Tier 1 (5%) uncertainty. | Not applicable. |

**Response to Comments**

NMFS accepted comments on the proposed rule to update management reference point values through April 2, 2015. NMFS received six public comment submissions from individuals, via the *www.regulations.gov* portal. The comments, and NMFS' responses, have been grouped for similarity.

*Comment 1:* Two individuals expressed support for the proposed rule, referring to it as a ''great idea'' and praising the economic benefits of a fishery with ''fair measurements.''

*Response:* NMFS agrees that a sustainably managed fishery is beneficial.

*Comment 2:* Three individuals supported fish and the fishing industry, but did not provide specific comments on the proposed rule.

*Response:* NMFS agrees that fisheries should be managed to be beneficial to both the fish and the public. Under the MSA, NMFS is responsible for sustainable management of the nation's fisheries. This rule is consistent with that obligation and addresses requirements of the FMP and MSA National Standard 1.

*Comment 3:* One individual asked ''where are the proposed fisheries?''

*Response:* This rule does not propose fisheries. Salmon management measures for ocean salmon fisheries off the coasts of Washington, Oregon, and California are set annually through the Council process (*http://www.pcouncil.org/salmon/*).

**Updated Information From the Proposed Rule**

The Council took final action at their March 2015 meeting to adopt the three management reference points described in the proposed rule that were previously not explicitly adopted by the Council (Willapa Bay natural coho MSST, and Grays Harbor fall Chinook MSST and MFMT). The Council transmitted this action to NMFS in a letter dated April 1, 2015. Therefore, under this final rule, NMFS implements all of the management reference point values in the proposed rule as recommended by the Council. See Table 1 for the management reference points adopted by the Council and implemented in this final rule.

**Classification**

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this rule is consistent with the Pacific Salmon Fishery Management Plan, the MSA, and other applicable law.

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

The West Coast Regional Administrator has determined that the actions of this rule qualify for categorical exclusion from further NEPA analysis under NAO 216–6.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a RFA is not required and none has been prepared.

This rule does not establish any new reporting or recordkeeping requirements. This rule does not include a collection of information. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This action is not expected to have adverse effects on any species listed under the Endangered Species Act (ESA) or designated critical habitat. This action modifies reference points used in the setting of annual management measures for West Coast salmon fisheries. NMFS has current ESA biological opinions that cover fishing under annual regulations adopted under the FMP on all listed salmon species except Lower Columbia River natural coho; NMFS expects to complete a new biological opinion for Lower Columbia River natural coho prior to implementing 2015 salmon management measures on May 1, 2015. NMFS reiterates their consultation standards for all ESA-listed salmon and steelhead species in their annual Guidance letter to the Council. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The annual management measures are designed to be consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions. The Council's recommended management measures, which will be consistent with the reference points implemented by this rule, therefore comply with NMFS' consultation standards and guidance for all listed salmon species which may be affected by Council fisheries. In some cases, the recommended measures are more restrictive than NMFS' ESA requirements.

In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW. Annual salmon management measures are designed to be consistent with the terms of that biological opinion.

This rule was developed after meaningful collaboration with the affected tribes, through the Council process. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction.

The Assistant Administrator for Fisheries finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness. This rule implements changes in management reference points that will be used in setting ocean salmon fisheries, beginning in 2015. As previously discussed, the actions in this rule were developed through the Council's Methodology review. The actions were adopted by the Council over two Council meetings and the final recommendation was transmitted to NMFS in April 2015. The Council took action on some of the management reference points in November 2014 and transmitted their initial recommendations to NMFS on January 23, 2015, with further clarification transmitted to NMFS on February 9, 2015. The Council finalized adoption of the management reference points and transmitted them to NMFS on April 1, 2015. Therefore, this rulemaking could not be implemented sooner. Delaying the effectiveness of the actions in this rule by 30 days would result in managing the three affected stocks in a manner that is not consistent with the best available science, and would complicate NMFS' approval and implementation of salmon fisheries recommended by the Council, beginning May 1, 2015. Delay in implementing this rule would have the following effects on the impacted stocks: Southern Oregon coastal Chinook and Grays Harbor fall Chinook would be subject to overfishing, as the current MFMT would be higher than recommended by the STT and adopted by the Council; Willapa Bay natural coho would have no defined reference points, no way to evaluate for overfishing, and no defined annual catch limit. Therefore, if the effectiveness of this rule is delayed, it would undermine the purposes of this

agency action and the requirements of the Magnuson-Stevens Act.

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

Dated: April 7, 2015.

**Samuel D. Rauch III,**

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

[FR Doc. 2015–08394 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 80, No. 70
Monday, April 13, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1205

**[AMS–CN–12–0059]**

### Cotton Research and Promotion Program: Procedures for Conduct of Sign-Up Period

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. The amendments would update various dates, name changes, addresses, and make other administrative changes.

**DATES:** Comments must be received on or before April 23, 2015.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by *AMS–CN–12–0059*, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov.* Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery to* Cotton Research and Promotion Staff, Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. A copy of this notice may be found at: *www.regulations.gov* .

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866 and Executive Order 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 action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

#### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this proposed rule would not have substantial and direct effects on Tribal governments and would not have significant tribal implications.

#### Executive Order 12988

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

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Agricultural Marketing Service (AMS) has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $7,000,000. In 2014, an estimated 16,000 producers, and approximately 20,000 importers were subject to the order. The majority of these producers and importers are small businesses under the criteria established by the Small Business Administration.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 total valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This proposed rule would provide those persons who are not in favor of the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements for producers and importers are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum, and for the 1997, 2001, and 2007 sign-up periods. The sign-ups in 1997, 2001, and 2007 sign-ups did not generate the required number of signatures to hold another referendum. The amendments proposed in this action would update various dates, name changes, addresses, and make other miscellaneous changes.

The proposed sign-up procedures would not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility. The information collection requirements under the Paperwork Reduction Act are minimal.

**Paperwork Reduction Act**

The information collections proposed by this rule will be carried out under the OMB Control Number 0581–0093. This rule will not add to the overall burden currently approved by OMB and assigned OMB Control Number 0581–0093 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This OMB Control Number is referenced in section 1205.541 of the regulations.

**Background**

The 1991 amendments to the Cotton Research and Promotion Order (7 CFR part 1205) were implemented following the July 1991 referendum. The amendments were provided for in the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) amendments of 1990. These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On May 29, 2013, USDA issued a determination based on its review (78 FR 32228), not to conduct a referendum regarding the 1991 amendments to the Order; however, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum. The Act provides for a sign-up period during which eligible cotton producers and importers may request that USDA conduct a referendum on continuation of the 1991 amendments to the Order. Accordingly, USDA will provide all eligible Upland cotton producers and importers an opportunity to request a continuance referendum regarding the 1991 amendments to the Order.

Pursuant to section 8(c) of the Act, the sign-up period will be provided for all eligible producers and importers. Eligible cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the county Farm Service Agency (FSA) office where their farm is located. If a producer's land is in more than one county, the producer shall sign-up at the county office where FSA administratively maintains and processes the producer's farm records. Producers may alternatively may request a sign-up form in the mail from the same office or through the USDA, AMS Web site: *http://www.ams.usda.gov/Cotton* and return it to their FSA office or return their signed request forms to USDA, Agricultural Marketing Service, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077–8249.

Eligible importers would be provided the opportunity to sign up to request a continuance referendum by downloading a form from the AMS Web site, or request a sign-up form by contacting *CottonRP@ams.usda.gov* or (540) 361–2726 and return their signed request forms to USDA, Agricultural Marketing Service, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077–8249.

Such request must be accompanied by a copy of the U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment for calendar year 2014. Requests and supporting documentation should be mailed to USDA, AMS, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077–8249.

The sign-up period will be from May 11, 2015, until May 22, 2015. Producer and importer forms shall only be counted if received by USDA during the stated sign-up period.

Section 8(c)2 of the Act provides that if USDA determines, based on the results of the sign-up, that 10 percent or more of the total number of eligible producers and importers that voted in the most recent 1991 referendum (*i.e.,* 4,622) request a continuance referendum on the 1991 amendments, a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton. For example, when counting the requests, the AMS Cotton and Tobacco Program would determine the total number of valid requests from all cotton-producing states and from importers. Not more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent for 4,622 total signatures required to call for a referendum. If USDA determines that 10 percent or more of the number of producers and importers who voted in the most recent referendum favor a continuance referendum, a referendum will be held.

This proposed rule would amend the procedures for the conduct of the current sign-up period. The current rules and regulations provide for sections on definitions, supervision of the sign-up period, eligibility, participation in the sign-up period, counting requests, reporting results and instructions and forms.

In sections 1205.20, 1205.26, and 1205.27 ''calendar year 2006'' would change to ''calendar year 2014.'' Also, in section 1205.26, eligible persons are further defined to ensure that all producers that planted cotton during 2014 will be eligible to participate in the sign-up period. In sections 1205.27, 1205.28, and 1205.29 sign-up period conduct dates, FSA reporting dates, and mailing addresses have been updated. In section 1205.27(b), AMS is proposing to post information in its Web site rather than mailing a form to each known importer. Before the start of the sign-up period, AMS will post sign-up information, including sign-up forms, on its Web site: *http://www.ams.usda.gov/Cotton.*

A 10-day comment period is determined to be appropriate because these proposed eligibility and participation requirements are substantially the same as the eligibility and participation requirements that were used in previous referenda and a sign-up period; participation is voluntary; and this rule, if adopted, should be made effective as soon as possible in order to conduct the sign-up at the earliest possible dates.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

**7 CFR Part 1205, Sections 1205.10 Through 1205.30**

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

## PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

■ 2. Section 1205.20 is revised to read as follows:

**§ 1205.20 Representative period.**

The term *representative period* means the 2014 calendar year.

■ 3. In § 1205.26, paragraphs (a)(1) and (2) are revised to read as follows:

**§ 1205.26 Eligibility.**

* * * * *

(a) * * *

(1) Any person who was engaged in the production of Upland cotton during calendar year 2014; and

(2) Any person who was an importer of Upland cotton and imported Upland cotton in excess of the value of $2.00 per line item entry during calendar year 2014.

* * * * *

■ 4. Section 1205.27 is revised to read as follows:

**§ 1205.27 Participation in the sign-up period.**

The sign-up period will be from May 11, 2015, until May 22, 2015. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by May 22, 2015.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and AMS shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, AMS will post sign-up information, including sign-up forms, on its Web site: *http://www.ams.usda.gov/Cotton.* Importers who favor the conduct of a continuance referendum can download a form from the Web site, or request a sign-up form by contacting *CottonRP@ams.usda.gov* or (540) 361–2726 and one will be provided to them. Importers may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment for calendar year 2014. The USDA, AMS, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077–8249 shall be considered the polling place for all cotton importers. All requests and supporting documents must be received by May 22, 2015.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the ''County FSA Office Sign-up Sheet.'' A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA–578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA–578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note ''ineligible'' in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by May 22, 2015.

■ 7. In § 1205.28, the first sentence is revised to read as follows:

**§ 1205.28 Counting.**

County FSA offices and FSA, Deputy Administrator for Field Operations (DAFO), shall begin counting requests no later than May 22, 2015. * * *

■ 8. Section 1205.29 is revised to read as follows:

**§ 1205.29 Reporting results.**

(a) Each county FSA office shall prepare and transmit to the state FSA office, by June 1, 2015, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAFO shall prepare, by June 1, 2015, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by June 1, 2015, forward all county reports to DAFO. By June 8, 2015, DAFO shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406.

**Authority:** 7 U.S.C. 2101–2118.

Dated: April 6, 2015.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2015–08163 Filed 4–10–15; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF ENERGY

## 10 CFR Part 430

**[Docket Number EERE–2014–BT–STD–0036]**

**RIN 1904–AD35**

## Energy Conservation Program for Consumer Products: Energy Conservation Standards for Hearth Products

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

**ACTION:** Notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** The U.S. Department of Energy (DOE) has published a notice of proposed rulemaking (NOPR) and TSD (technical support document) that analyzes the potential economic impacts and energy savings that could result from potential energy conservation standards for hearth products. DOE published this NOPR and analysis so stakeholders can review the relevant outputs and the underlying assumptions and calculations. After receiving a request for additional time to comment, DOE has decided to extend the comment period for the NOPR pertaining to the energy conservation standards for hearth products until May 11, 2015.

**DATES:** The comment period on the NOPR and TSD pertaining to the energy conservation standards for hearth products published in the **Federal Register** on February 9, 2015 (80 FR 7082) is extended, and comments must be postmarked by no later than May 11, 2015.

**ADDRESSES:**

*Instructions:* Any comments submitted must identify the NOPR for Energy Conservation Standards for Hearth Products, and provide docket number EERE–2014–BT–STD–0036 and/or regulatory information number (RIN) number 1904–AD35. Comments may be submitted using any of the following methods:

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

2. *Email: HearthHeatingProd2014STD0036@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in Word Perfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form on encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of the February 9, 2015 NOPR.

*Docket:* The docket, which will include all relevant **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publically available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=84*. This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' of the NOPR for further information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *hearth_products@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** DOE published a NOPR in the **Federal Register** to make available and invite public comments on its analysis regarding potential energy conservation standards for hearth products. 80 FR 7082 (Feb. 9, 2015). The document set a deadline for the submission of written comments by April 10, 2015. RH Peterson Co. requested an extension of the public comment period, stating that additional time is necessary to review the published analysis in order to prepare and submit comments. DOE has determined that extending the comment period to allow additional time for interested parties to submit comments is appropriate based on the foregoing reason. DOE believes that extending the comment period by 30 days will provide the public with sufficient time to submit comments responding to DOE's analysis. Accordingly, DOE will consider any comments postmarked by May 11, 2015, and deems any comments received by that date to be timely submitted.

Issued in Washington, DC, on April 1, 2015.

**Kathleen B. Hogan,**

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

[FR Doc. 2015–08154 Filed 4–9–15; 4:15 pm]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–0823; Directorate Identifier 2014–NM–211–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by results of a design review indicating that the burst pressure of the flexible hose, used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard, was lower than the opening pressure of the high-pressure relief valve, which could cause the flexible hose to burst before it can vent the excess oxygen overboard. This proposed AD would require replacing the oxygen hose assembly with a new, improved assembly. We are proposing this AD to prevent the accumulation of oxygen in an enclosed space, which could result in an uncontrolled oxygen-fed fire if an ignition source is nearby.

**DATES:** We must receive comments on this proposed AD by May 28, 2015.

**ADDRESSES:** You may send comments 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**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–2015–0823; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7318; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0823; Directorate Identifier 2014–NM–211–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2014–36, dated October 17, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states:

> Design review found that the burst pressure of the flexible hose, used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard, is lower than the opening pressure of the high-pressure relief valve. This could cause the flexible hose to burst before it is able to vent the excess oxygen overboard. If an ignition source is present, the accumulation of oxygen in an enclosed space may result in an uncontrolled oxygen-fed fire.
>
> This [Canadian] AD mandates the replacement of the oxygen hose assembly with a new design oxygen hose assembly.

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–2015–0823.

**Related Service Information Under 1 CFR Part 51**

Bombardier has issued Service Bulletin 601R–35–018, dated May 21, 2013. The service information describes procedures for replacing the oxygen hose assembly with a new, improved assembly. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 575 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. Required parts would cost about $0 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $97,750, or $170 per airplane.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc.:** Docket No. FAA–2015–0823; Directorate Identifier 2014–NM–211–AD.

**(a) Comments Due Date**

We must receive comments by May 28, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

**(d) Subject**

Air Transport Association (ATA) of America Code 35, Oxygen.

**(e) Reason**

This AD was prompted by results of a design review indicating that the burst pressure of the flexible hose, used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard, was lower than the opening pressure of the high-pressure relief valve, which could cause the flexible hose to burst before it can vent the excess oxygen overboard. We are issuing this AD to prevent the accumulation of oxygen in an enclosed space, which could result in an uncontrolled oxygen-fed fire if an ignition source is nearby.

**(f) Compliance**

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

**(g) Replacement**

Before the accumulation of 5,800 total flight hours or within 44 months after the effective date of this AD, whichever occurs first, replace all oxygen hose assemblies having part number (P/N) 38026–4–0280–000 with new, improved assemblies having P/N 601R44045–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–35–018, dated May 21, 2013.

**(h) Parts Installation Prohibition**

As of the effective date of this AD, no person may install an oxygen hose assembly, P/N 38026–4–0280–000, on any airplane.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–36, dated October 17, 2014, 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–2015–0823.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 27, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–08073 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–0684; Directorate Identifier 2014–NM–215–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–7–1 and DHC–7–100 airplanes. This proposed AD was prompted by reports of cracks that were discovered in the outboard nacelles upper longeron channels and angles. This proposed AD would require a one-time detailed visual inspection for cracking in the outboard nacelles upper longeron channels and angles; and repair if necessary. We are proposing this AD to detect and correct cracks in the outboard nacelles upper longeron channels and angles, which could lead to the loss of stiffness in the forward engine mount; and possible catastrophic failure.

**DATES:** We must receive comments on this proposed AD by May 28, 2015.

**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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Viking Air Limited, 9574 Hampden Road, Sidney, British Columbia V8L 8V5, Canada; telephone 250–656–7227; fax 250–656–0673; email *technical.publications@vikingair.com;* Internet *http://www.vikingair.com*. You may view this

referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**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–2015–0684; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228 7329; fax 516–794 5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0684; Directorate Identifier 2014–NM–215–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–34, dated October 2, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–7–1 and DHC–7–100 airplanes. The MCAI states:

> Longitudinal cracks were discovered in the outboard nacelles upper longeron channels and angles at station XN1 78. The cracks were partially hidden by bearing blocks, Part Number (P/N) 75420978, at the nacelle latch locations. Undetected, these cracks may lead to the loss of stiffness in the forward engine mount; which may lead to a catastrophic failure.

Required actions include a one-time detailed visual inspection for cracking of the outboard nacelles upper longeron channels and angles. Corrective actions include repair, if necessary. 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–2015–0684.

**Related Service Information Under 1 CFR Part 51**

Viking Air Limited has issued Service Bulletin V7–54–02, Revision NC, dated December 14, 2012. The service information describes procedures for an inspection for cracks in the outboard nacelles upper longeron channels and angles; and repair if necessary. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

**Costs of Compliance**

We estimate that this proposed AD affects 10 airplanes of U.S. registry.

We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $2,550, or $255 per product.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.):** Docket No. FAA–2015–0684; Directorate Identifier 2014–NM–215–AD.

**(a) Comments Due Date**

We must receive comments by May 28, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Viking Air Limited (Type Certificate previously held by Bombardier, Inc.) Model DHC–7–1 and DHC–7–100 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

**(e) Reason**

This AD was prompted by reports of cracks that were discovered in the outboard nacelles upper longeron channels and angles. We are issuing this AD to detect and correct cracks in the outboard nacelles upper longeron channels and angles, which could lead to the loss of stiffness in the forward engine mount; and possible catastrophic failure.

**(f) Compliance**

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

**(g) Inspection and Repair**

Within 6 months after the effective date of this AD, do a one-time detailed visual inspection for cracking in the outboard nacelles upper longeron channels and angles, in accordance with the Accomplishment Instructions of Viking Air Limited Service Bulletin V7–54–02, Revision NC, dated December 14, 2012. If any cracking is found during the inspection required by this paragraph: Before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Viking Air Limited's (Type Certificate Previously Held by Bombardier, Inc.) TCCA Design Approval Organization (DAO).

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Viking Air Limited's (Type Certificate Previously Held by Bombardier, Inc.) TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

**(i) Special Flight Permits**

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–34, dated October 2, 2014, 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–2015–0684.

(2) For service information identified in this AD, contact Viking Air Limited, 9574 Hampden Road, Sidney, British Columbia V8L 8V5, Canada; telephone 250–656–7227; fax 250–656–0673; email *technical.publications@vikingair.com;* Internet *http://www.vikingair.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 27, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–08074 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–0822; Directorate Identifier 2014–NM–210–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by results of a design review indicating that the burst pressure of the flexible hose, used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard, was lower than the opening pressure of the high-pressure relief valve, which could cause the flexible hose to burst before it can vent the excess oxygen overboard. This proposed AD would require replacing the oxygen hose assembly with a new, improved assembly. We are proposing this AD to prevent the accumulation of oxygen in an enclosed space, which could result in an uncontrolled oxygen-fed fire if an ignition source is nearby.

**DATES:** We must receive comments on this proposed AD by May 28, 2015.

**ADDRESSES:** You may send comments 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**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–2015–0822; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7318; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0822; Directorate Identifier 2014–NM–210–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2014–37, dated October 17, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> Design review found that the burst pressure of the flexible hose, used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard, is lower than the opening pressure of the high-pressure relief valve. This could cause the flexible hose to burst before it is able to vent the excess oxygen overboard. If an ignition source is present, the accumulation of oxygen in an enclosed space may result in an uncontrolled oxygen-fed fire.
>
> This [Canadian] AD mandates the replacement of the oxygen hose assembly with a new design oxygen hose assembly.

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–2015–0822.

**Related Service Information Under 1 CFR Part 51**

Bombardier has issued Service Bulletin 670BA–35–013, Revision A, dated September 23, 2013, including Appendix A, dated May 21, 2013. The service information describes procedures for replacing the oxygen hose assembly with a new, improved assembly. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 400 airplanes of U.S. registry.

We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. Required parts would cost about $0 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $340,000, or $850 per airplane.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc.:** Docket No. FAA–2015–0822; Directorate Identifier 2014–NM–210–AD.

**(a) Comments Due Date**

We must receive comments by May 28, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10336 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15297 inclusive.

(3) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19038 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 35, Oxygen.

**(e) Reason**

This AD was prompted by results of a design review indicating that the burst pressure of the flexible hose, used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard, was lower than the opening pressure of the high-pressure relief valve, which could cause the flexible hose to burst before it can vent the excess oxygen overboard. We are issuing this AD to prevent the accumulation of oxygen in an enclosed space, which could result in an uncontrolled oxygen-fed fire if an ignition source is nearby.

**(f) Compliance**

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

**(g) Replacement**

Before the accumulation of 5,800 total flight hours, or within 44 months after the effective date of this AD, whichever occurs first, replace all oxygen hose assemblies having part number (P/N) S6946–01 with new, improved assemblies having P/N BA670–44025–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–35–013, Revision A, dated September 23, 2013, including Appendix A, dated May 21, 2013. For airplanes on which Supplemental Type Certificate ST01648NY (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01648NY.pdf*) is installed, only PART B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–35–013, Revision A, dated September 23, 2013, is required.

**(h) Credit for Previous Actions**

This paragraph provides credit for the replacement specified in paragraph (g) of this AD, if that action was performed before the effective date of this AD using Bombardier Service Bulletin 670BA–35–013, dated May 21, 2013, which is not incorporated by reference in this AD.

**(i) Parts Installation Prohibition**

As of the effective date of this AD, no person may install an oxygen hose assembly, P/N S6946–01, on any airplane.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–37, dated October 17, 2014, 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–2015–0822.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 27, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–08329 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 93

**[Docket No. FAA–2014–1073; Notice No. 14–11B]**

**RIN 2120–AJ89**

## Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport; Notice of Availability of Responses to Clarifying Questions; Request for Extension of Comment Period

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

**ACTION:** Notice of proposed rulemaking; clarification.

**SUMMARY:** This action announces the placement in the docket of a response to requests for clarification of the notice of proposed rulemaking (NPRM) published on January 8, 2015. In the NPRM, the U.S. Department of Transportation (DOT) and the FAA proposed to replace the Orders limiting scheduled operations at John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR), and limiting scheduled and unscheduled operations at LaGuardia Airport (LGA). The Orders are scheduled to expire when the rulemaking is final and in effect, but not later than October 29, 2016. The proposed rule is intended to provide a longer-term and comprehensive approach to slot management at JFK, EWR, and LGA.

By letters posted to the public docket, Airlines for America and Sabre Corporation submitted questions regarding various provisions in the NPRM they believe need further clarification before meaningful comments can be submitted to the docket. The DOT and the FAA have reviewed these requests and a coordinated response has been placed in the docket. That document also responds to Airlines for America's renewed request for an extension of the comment period and request for a public meeting.

**DATES:** Send comments on or before May 8, 2015.

**ADDRESSES:** You may send comments identified by docket number FAA–2014–1073 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of

Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Molly Smith, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3274; email *molly.w.smith@faa.gov;* Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–6462; email *susan.pfingstler@faa.gov;* or Peter Irvine, U.S. Department of Transportation, Office of Aviation Analysis, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–3156; email: *peter.irvine@dot.gov.*

For legal questions concerning this action, contact Bonnie Dragotto, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3808; email *bonnie.dragotto@faa.gov;* or Cindy Baraban, U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9159; email *cindy.baraban@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Additional Information**

*Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the DOT and the FAA will consider all comments received on or before the closing date for comments. We will also consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

*Proprietary or Confidential Business Information:* Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

*Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued under authority provided by 49 U.S.C. 106(f) in Washington, DC, on April 6, 2015.

**Brandon Belford,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

**Richard M. Swayze,**

*Assistant Administrator for Policy, International Affairs, and Environment.*

[FR Doc. 2015–08168 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No.: FAA–2015–0783; Notice No. 15–02]**

**RIN 2120–AA65**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to remove certain redundant or underutilized ground-based non-directional beacon and very high frequency, omnidirectional radio range Standard Instrument Approach Procedures based on the criteria established by the FAA's Policy for Discontinuance of Certain Instrument Approach Procedures.

**DATES:** Send comments on or before May 28, 2015.

**ADDRESSES:** Send comments identified by docket number FAA–2015–0783 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Wayne Eckenrode, Aeronautical Information Services, AJV–5, Federal Aviation Administration, Air Traffic Organization, 4500 Mercantile Plaza Drive, Fort Worth, TX 76137; telephone (202) 494–8898; email *AMC–ATO–IFP-Cancellations@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part *A,* Subpart *i,* Section 40103, sovereignty and use of airspace, and Subpart iii, Section 44701, general requirements. Under these sections, the FAA is charged with prescribing regulations to regulate the safe and efficient use of the navigable airspace; to govern the flight, navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103(b)), and to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security (49 U.S.C. 44701(a)(5)). This action is within the scope of that authority.

Standard Instrument Approach Procedures (SIAPs) are routinely incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into Title 14 of the Code of Federal Regulations; Part 97 (14 CFR part 97), Subpart C—TERPS Procedures, and are promulgated by rulemaking procedures. The FAA will consider all public comments before issuing a final rule removing selected SIAPs.

## Background

On June 27, 2014, the FAA published a policy establishing criteria for cancelling instrument approach procedures (79 FR 36576). Cancelling certain ground-based non-directional beacon (NDB), and very high frequency (VHF), omnidirectional radio range (VOR) SIAPs is one integral part of right-sizing the quantity and type of procedures in the National Airspace System (NAS). As new technology facilitates the introduction of area navigation (RNAV) instrument approach procedures, the number of procedures available in the National Airspace System has nearly doubled over the past decade. The complexity and cost to the FAA of maintaining the existing ground based navigational infrastructure while expanding the new RNAV capability is not sustainable. Therefore, the FAA is proposing the following list of SIAPs for cancellation based on the criteria established in the Policy.

## The Proposed List for Cancellation

SIAPs and associated supporting data adopted or cancelled by the FAA are documented on FAA Forms 8260–3, 8260–4, and 8260–5. These forms are incorporated by reference via Transmittal Letter.

Based on the final policy criteria, 736 procedures have been identified for cancellation at this time. The procedures considered for cancellation are listed in this section. Additionally, the list can be viewed on the AeroNav Products IFP Announcements and Reports Web page at the following link, *https://www.faa.gov/air_traffic/flight_info/aeronav/procedures/reports/.*

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| AK | ATQASUK EDWARD BURNELL SR MEMORIAL | ATK | NDB RWY 24. |
| AK | BETHEL | BET | VOR/DME RWY 19R. |
| AK | BETTLES | BTT | VOR/DME RWY 01. |
| AK | COLD BAY | CDB | VOR/DME OR TACAN–A. |
| AK | DILLINGHAM | DLG | VOR/DME RWY 19. |
| AK | KENAI MUNI | ENA | VOR RWY 19R. |
| AK | EMMONAK | ENM | VOR RWY 34. |
| AK | FORT YUKON | FYU | VOR/DME OR TACAN–A. |
| AK | EDWARD G. PITKA SR | GAL | VOR/DME RWY 25. |
| AK | GULKANA | GKN | VOR/DME RWY 33. |
| AK | KOYUK ALFRED ADAMS | KKA | NDB/DME RWY 1. |
| AK | MC GRATH | MCG | VOR/DME OR TACAN RWY 16. |
| AK | MC GRATH | MCG | VOR–A. |
| AK | MIDDLETON ISLAND | MDO | VOR/DME RWY 20. |
| AK | RALPH WIEN MEMORIAL | OTZ | VOR RWY 27. |
| AK | RALPH WIEN MEMORIAL | OTZ | VOR RWY 09. |
| AK | RALPH WIEN MEMORIAL | OTZ | VOR/DME Y RWY 27. |
| AK | DEADHORSE | SCC | VOR RWY 05. |
| AK | DEADHORSE | SCC | VOR/DME RWY 23. |
| AK | DEADHORSE | SCC | VOR/DME RWY 05. |
| AK | SAND POINT | SDP | NDB/DME RWY 13. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| AK | SHISHMAREF | SHH | NDB RWY 23. |
| AK | SITKA ROCKY GUTIERREZ | SIT | VOR/DME–A. |
| AK | SOLDOTNA | SXQ | NDB RWY 25. |
| AK | SOLDOTNA | SXQ | VOR/DME–A. |
| AK | TALKEETNA | TKA | VOR–A. |
| AK | UNALAKLEET | UNK | VOR/DME–D. |
| AK | YAKUTAT | YAK | VOR/DME RWY 11. |
| AL | ANNISTON RGNL | ANB | NDB RWY 5. |
| AL | TALLADEGA MUNI | ASN | VOR/DME RWY 04. |
| AL | AUBURN UNIVERSITY RGNL | AUO | VOR RWY 29. |
| AL | PRYOR FIELD RGNL | DCU | VOR RWY 18. |
| AL | BESSEMER | EKY | VOR RWY 05. |
| AL | WALKER COUNTY-BEVILL FIELD | JFX | VOR/DME–A. |
| AL | NORTHWEST ALABAMA RGNL | MSL | VOR RWY 29. |
| AL | CRAIG FIELD | SEM | NDB RWY 33. |
| AR | WALNUT RIDGE RGNL | ARG | VOR–A. |
| AR | SPRINGDALE MUNI | ASG | VOR RWY 18. |
| AR | WEST MEMPHIS MUNI | AWM | VOR/DME–A. |
| AR | BAXTER COUNTY | BPK | VOR–A. |
| AR | SOUTH ARKANSAS RGNL AT GOODWIN FIELD | ELD | VOR RWY 22. |
| AR | DRAKE FIELD | FYV | VOR–A. |
| AR | THOMPSON-ROBBINS | HEE | VOR RWY 17. |
| AR | MEMORIAL FIELD | HOT | VOR Y RWY 05. |
| AR | MEMORIAL FIELD | HOT | VOR Z RWY 05. |
| AR | BOONE COUNTY | HRO | VOR–A. |
| AR | JONESBORO MUNI | JBR | VOR RWY 23. |
| AR | LAKE VILLAGE MUNI | M32 | VOR/DME–B. |
| AR | MENA INTERMOUNTAIN MUNI | MEZ | NDB RWY 27. |
| AR | MENA INTERMOUNTAIN MUNI | MEZ | VOR/DME–A. |
| AR | NORTH LITTLE ROCK MUNI | ORK | VOR RWY 35. |
| AR | GRIDERFIELD | PBF | VOR RWY 18. |
| AR | ROGERS MUNI-CARTER FIELD | ROG | NDB RWY 20. |
| AR | ROGERS MUNI-CARTER FIELD | ROG | VOR/DME RWY 20. |
| AR | STUTTGART MUNI | SGT | VOR/DME–A. |
| AR | BENTONVILLEMUNI/LOUISEMTHADENFIELD | VBT | VOR/DME–B. |
| AZ | CASA GRANDE MUNI | CGZ | VOR RWY 05. |
| AZ | CHANDLER MUNI | CHD | NDB RWY 4R. |
| AZ | BISBEE DOUGLAS INTL | DUG | VOR RWY 17. |
| AZ | GRAND CANYON NATIONAL PARK | GCN | VOR RWY 03. |
| AZ | YUMA MCAS/YUMA INTL | NYL | VOR/DME RNAV RWY 21R. |
| AZ | NOGALES INTL | OLS | VOR OR GPS–A. |
| AZ | NOGALES INTL | OLS | NDB OR GPS–C. |
| CA | ARCATA | ACV | VOR/DME RWY 01. |
| CA | ARCATA | ACV | VOR/DME RWY 14. |
| CA | NAPA COUNTY | APC | VOR RWY 06. |
| CA | CATALINA | AVX | VOR OR GPS–A. |
| CA | MEADOWS FIELD | BFL | VOR/DME RWY 30R. |
| CA | EASTERN SIERRA RGNL | BIH | VOR OR GPS–A. |
| CA | EASTERN SIERRA RGNL | BIH | VOR/DME OR GPS–B. |
| CA | BOB HOPE | BUR | VOR RWY 08. |
| CA | BRAWLEY MUNI | BWC | VOR/DME–A. |
| CA | BUCHANAN FIELD | CCR | VOR RWY 19R. |
| CA | JACK MC NAMARA FIELD | CEC | VOR RWY 11. |
| CA | JACK MC NAMARA FIELD | CEC | VOR/DME RWY 11. |
| CA | CHICO MUNI | CIC | VOR/DME RWY 13L. |
| CA | CHINO | CNO | VOR RWY 26R. |
| CA | MC CLELLAN-PALOMAR | CRQ | VOR–A. |
| CA | EL MONTE | EMT | VOR/DME OR GPS–B. |
| CA | FULLERTON MUNI | FUL | VOR–A. |
| CA | LONG BEACH/DAUGHERTY FIELD/ | LGB | VOR OR TACAN RWY 30. |
| CA | LOS BANOS MUNI | LSN | VOR/DME RWY 14. |
| CA | MC CLELLAN AIRFIELD | MCC | VOR/DME RWY 16. |
| CA | MERCED RGNL//MACREADY FIELD | MCE | VOR RWY 30. |
| CA | CASTLE | MER | VOR/DME RWY 31. |
| CA | SACRAMENTO MATHER | MHR | VOR/DME RWY 22L. |
| CA | MODESTO CITY-CO-HARRY SHAM FLD | MOD | VOR/DME RWY 28R. |
| CA | METROPOLITAN OAKLAND INTL | OAK | VOR RWY 10R. |
| CA | METROPOLITAN OAKLAND INTL | OAK | VOR/DME RWY 28L. |
| CA | ONTARIO INTL | ONT | VOR/DME RWY 08R. |
| CA | OXNARD | OXR | VOR RWY 25. |
| CA | BRACKETT FIELD | POC | VOR OR GPS–A. |
| CA | RIVERSIDE MUNI | RAL | VOR RWY 09. |
| CA | REDDING MUNI | RDD | VOR RWY 34. |
| CA | SACRAMENTO EXECUTIVE | SAC | VOR RWY 02. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| CA | SAN BERNARDINO INTL | SBD | NDB RWY 6. |
| CA | SAN FRANCISCO INTL | SFO | VOR RWY 19L. |
| CA | SAN FRANCISCO INTL | SFO | VOR–B. |
| CA | NORMAN Y. MINETA SAN JOSE INTL | SJC | VOR RWY 12R. |
| CA | NORMAN Y. MINETA SAN JOSE INTL | SJC | VOR/DME RWY 30L. |
| CA | NORMAN Y. MINETA SAN JOSE INTL | SJC | VOR/DME RWY 30R. |
| CA | SANTA MARIA PUB/CAPT G ALLAN HANCOCK FLD | SMX | VOR RWY 12. |
| CA | CHARLES M. SCHULZ-SONOMA COUNTY | STS | VOR/DME RWY 32. |
| CA | LAKE TAHOE | TVL | VOR/DME OR GPS–A. |
| CA | VAN NUYS | VNY | VOR–A. |
| CA | WATSONVILLE MUNI | WVI | VOR/DME–A. |
| CO | DURANGO-LA PLATA COUNTY | DRO | VOR/DME RWY 03. |
| CO | MONTROSE RGNL | MTJ | VOR/DME RWY 13. |
| CO | TELLURIDE RGNL | TEX | VOR/DME–A. |
| CT | IGOR I SIKORSKYMEMORIAL | BDR | VOR RWY 06. |
| CT | IGOR I SIKORSKYMEMORIAL | BDR | VOR RWY 29. |
| CT | DANBURY MUNI | DXR | VOR OR GPS–A. |
| CT | HARTFORD-BRAINARD | HFD | VOR–A. |
| CT | TWEED-NEW HAVEN | HVN | VOR–A. |
| CT | TWEED-NEW HAVEN | HVN | VOR RWY 02. |
| DC | RONALD REAGAN WASHINGTON NATIONAL | DCA | VOR/DME OR GPS RWY 15. |
| DC | RONALD REAGAN WASHINGTON NATIONAL | DCA | VOR/DME OR GPS RWY 19. |
| DC | RONALD REAGAN WASHINGTON NATIONAL | DCA | VOR/DME RWY 01. |
| FL | APALACHICOLA RGNL-CLEVE RANDOLPH FIELD | AAF | NDB RWY 32. |
| FL | JACKSONVILLE EXECUTIVE AT CRAIG | CRG | VOR/DME RWY 32. |
| FL | DAYTONA BEACH INTL | DAB | VOR RWY 16. |
| FL | NORTH PALM BEACH COUNTY GENERAL AVIATION | F45 | VOR RWY 08R. |
| FL | FORT LAUDERDALE/HOLLYWOOD INTL | FLL | VOR RWY 28R. |
| FL | SAINT LUCIE COUNTY INTL | FPR | NDB–A. |
| FL | ORLANDO INTL | MCO | VOR/DME RWY 36L. |
| FL | ORLANDO INTL | MCO | VOR/DME RWY 36R. |
| FL | ST PETERSBURG-CLEARWATER INTL | PIE | VOR/DME RWY 18L. |
| FL | NORTHEAST FLORIDA RGNL | SGJ | VOR RWY 31. |
| FL | SARASOTA/BRADENTON INTL | SRQ | VOR RWY 32. |
| GA | SOUTHWEST GA. RGNL | ABY | NDB RWY 4. |
| GA | AUGUSTA RGNL AT BUSH FIELD | AGS | VOR/DME RWY 17. |
| GA | ATHENS/BEN EPPS | AHN | NDB RWY 27. |
| GA | WAYCROSS-WARE COUNTY | AYS | VOR–A. |
| GA | BRUNSWICK GOLDEN ISLES | BQK | VOR/DME–B. |
| GA | CRISP COUNTY-CORDELE | CKF | NDB RWY 10. |
| GA | DANIEL FIELD | DNL | NDB/DME–C. |
| GA | HEART OF GEORGIA RGNL | EZM | NDB RWY 2. |
| GA | HEART OF GEORGIA RGNL | EZM | VOR/DME–A. |
| GA | ATLANTA RGNL FALCON FIELD | FFC | NDB RWY 31. |
| GA | FULTON COUNTY AIRPORT-BROWN FIELD | FTY | NDB RWY 8. |
| GA | LEE GILMER MEMORIAL | GVL | NDB RWY 5. |
| GA | THOMSON-MCDUFFIE COUNTY | HQU | VOR/DME–A. |
| GA | THOMSON-MCDUFFIE COUNTY | HQU | NDB RWY 10. |
| GA | GWINNETT COUNTY-BRISCOE FIELD | LZU | NDB RWY 25. |
| GA | MACON DOWNTOWN | MAC | VOR/DME–B. |
| GA | DEKALB-PEACHTREE | PDK | VOR/DME RWY 21L. |
| GA | HARRIS COUNTY | PIM | NDB RWY 9. |
| GA | PERRY-HOUSTON COUNTY | PXE | VOR–A. |
| GA | EAST GEORGIA RGNL | SBO | NDB RWY 14. |
| GA | HENRY TIFT MYERS | TMA | VOR RWY 28. |
| GA | HENRY TIFT MYERS | TMA | VOR RWY 33. |
| GA | BARROW COUNTY | WDR | VOR/DME–A. |
| IA | WATERLOO RGNL | ALO | VOR RWY 36. |
| IA | WATERLOO RGNL | ALO | VOR/DME RWY 30. |
| IA | AMES MUNI | AMW | VOR RWY 31. |
| IA | COUNCIL BLUFFS MUNI | CBF | VOR–A. |
| IA | NORTHEAST IOWA RGNL | CCY | NDB RWY 12. |
| IA | THE EASTERN IOWA | CID | VOR RWY 27. |
| IA | THE EASTERN IOWA | CID | VOR/DME RWY 09. |
| IA | CLINTON MUNI | CWI | VOR RWY 03. |
| IA | DUBUQUE RGNL | DBQ | VOR RWY 13. |
| IA | DUBUQUE RGNL | DBQ | VOR RWY 31. |
| IA | DUBUQUE RGNL | DBQ | VOR RWY 36. |
| IA | DES MOINES INTL | DSM | VOR/DME RWY 23. |
| IA | KEOKUK MUNI | EOK | NDB RWY 14. |
| IA | KEOKUK MUNI | EOK | NDB RWY 26. |
| IA | FORT DODGE RGNL | FOD | VOR RWY 12. |
| IA | SIBLEY MUNI | ISB | NDB OR GPS RWY 17. |
| IA | MASON CITY MUNI | MCW | VOR RWY 36. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| IA | MASON CITY MUNI | MCW | VOR/DME RWY 18. |
| IA | OTTUMWA RGNL | OTM | VOR RWY 31. |
| IA | SHENANDOAH MUNI | SDA | VOR/DME RWY 12. |
| IA | SPENCER MUNI | SPW | VOR/DME RWY 12. |
| IA | SPENCER MUNI | SPW | VOR/DME RWY 30. |
| IA | SIOUX GATEWAY/COL. BUD DAY FIELD | SUX | NDB RWY 13. |
| IA | SIOUX GATEWAY/COL. BUD DAY FIELD | SUX | NDB RWY 31. |
| IA | SIOUX GATEWAY/COL. BUD DAY FIELD | SUX | VOR OR TACAN RWY 31. |
| IA | NEWTON MUNI | TNU | VOR RWY 32. |
| ID | BOISE AIR TERMINAL/GOWEN FLD | BOI | VOR/DME OR TACAN RWY 10L. |
| ID | BOISE AIR TERMINAL/GOWEN FLD | BOI | VOR/DME RWY 10R. |
| ID | BURLEY MUNI | BYI | VOR/DME–B. |
| ID | COEUR D'ALENE-PAPPY BOYINGTON FIELD | COE | VOR RWY 06. |
| ID | IDAHO FALLS RGNL | IDA | NDB RWY 20. |
| ID | LEWISTON-NEZ PERCE COUNTY | LWS | VOR RWY 26. |
| ID | POCATELLO RGNL | PIH | VOR/DME RWY 21. |
| ID | JOSLIN FIELD-MAGIC VALLEY RGNL | TWF | VOR RWY 26. |
| ID | JOSLIN FIELD-MAGIC VALLEY RGNL | TWF | NDB RWY 26. |
| IL | LAKE IN THE HILLS | 3CK | VOR–A. |
| IL | ST LOUIS RGNL | ALN | VOR–A. |
| IL | AURORA MUNI | ARR | VOR RWY 33. |
| IL | AURORA MUNI | ARR | VOR RWY 15. |
| IL | AURORA MUNI | ARR | VOR RWY 36. |
| IL | FRASCA FIELD | C16 | VOR/DME OR GPS–B. |
| IL | UNIVERSITY OF ILLINOIS-WILLARD | CMI | VOR RWY 18. |
| IL | UNIVERSITY OF ILLINOIS-WILLARD | CMI | VOR/DME RWY 14L. |
| IL | VERMILION REGIONAL | DNV | VOR RWY 21. |
| IL | DUPAGE | DPA | VOR RWY 2L. |
| IL | DUPAGE | DPA | VOR RWY 10. |
| IL | ALBERTUS | FEP | VOR RWY 24. |
| IL | GALESBURG MUNI | GBG | VOR RWY 03. |
| IL | LANSING MUNI | IGQ | VOR–A. |
| IL | GREATER KANKAKEE | IKK | VOR RWY 22. |
| IL | GREATER KANKAKEE | IKK | VOR RWY 04. |
| IL | LEWIS UNIVERSITY | LOT | VOR RWY 09. |
| IL | LAWRENCEVILLE-VINCENNES INTL | LWV | VOR RWY 18. |
| IL | MOUNT VERNON | MVN | VOR RWY 23. |
| IL | WILLIAMSON COUNTY RGNL | MWA | VOR RWY 20. |
| IL | OLNEY-NOBLE | OLY | VOR/DME–A. |
| IL | GENERAL DOWNING-PEORIA INTL | PIA | VOR/DME OR TACAN RWY 31. |
| IL | CHICAGO EXECUTIVE | PWK | VOR RWY 16. |
| IL | ABRAHAM LINCOLN CAPITAL | SPI | VOR/DME RWY 22. |
| IL | ABRAHAM LINCOLN CAPITAL | SPI | VOR/DME RWY 31. |
| IL | ABRAHAM LINCOLN CAPITAL | SPI | VOR/DME RWY 04. |
| IL | QUINCY RGNL-BALDWIN FIELD | UIN | VOR RWY 04. |
| IL | QUINCY RGNL-BALDWIN FIELD | UIN | VOR/DME RWY 22. |
| IN | SKY KING | 3I3 | VOR–B. |
| IN | PUTNAM COUNTY | 4I7 | VOR/DME–A. |
| IN | KENTLAND MUNI | 50I | VOR/DME RNAV OR GPS RWY 27. |
| IN | ANDERSON MUNI-DARLINGTON FIELD | AID | NDB RWY 30. |
| IN | ANDERSON MUNI-DARLINGTON FIELD | AID | VOR–A. |
| IN | WARSAW MUNI | ASW | VOR RWY 27. |
| IN | WARSAW MUNI | ASW | VOR RWY 9. |
| IN | MONROE COUNTY | BMG | VOR/DME RWY 24. |
| IN | MONROE COUNTY | BMG | VOR/DME RWY 35. |
| IN | NAPPANEE MUNI | C03 | VOR/DME OR GPS–A. |
| IN | METTEL FIELD | CEV | VOR–A. |
| IN | ELKHART MUNI | EKM | VOR RWY 27. |
| IN | ELKHART MUNI | EKM | VOR/DME RWY 36. |
| IN | EVANSVILLE RGNL | EVV | NDB RWY 22. |
| IN | EAGLE CREEK AIRPARK | EYE | NDB RWY 21. |
| IN | FORT WAYNE INTL | FWA | VOR OR TACAN RWY 14. |
| IN | FORT WAYNE INTL | FWA | VOR OR TACAN RWY 05. |
| IN | GOSHEN MUNI | GSH | VOR RWY 27. |
| IN | DE KALB COUNTY | GWB | VOR OR GPS–A. |
| IN | DE KALB COUNTY | GWB | VOR RWY 09. |
| IN | GREENWOOD MUNI | HFY | NDB RWY 1. |
| IN | TERRE HAUTE INTL-HULMAN FIELD | HUF | VOR RWY 23. |
| IN | TERRE HAUTE INTL-HULMAN FIELD | HUF | VOR/DME RWY 05. |
| IN | CLARK RGNL | JVY | NDB RWY 18. |
| IN | PURDUE UNIVERSITY | LAF | VOR–A. |
| IN | DELAWARE COUNTY RGNL | MIE | VOR RWY 32. |
| IN | MARION MUNI | MZZ | VOR RWY 22. |
| IN | MARION MUNI | MZZ | VOR RWY 4. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| IN | KOKOMO MUNI | OKK | VOR RWY 23. |
| IN | LA PORTE MUNI | PPO | VOR–A. |
| IN | RICHMOND MUNI | RID | VOR RWY 24. |
| IN | RICHMOND MUNI | RID | VOR RWY 33. |
| IN | INDIANAPOLIS EXECUTIVE | TYQ | VOR/DME RWY 36. |
| IN | NEW CASTLE-HENRY COUNTY MUNI | UWL | NDB RWY 27. |
| KS | COLONEL JAMES JABARA | AAO | VOR–A. |
| KS | DODGE CITY RGNL | DDC | VOR RWY 14. |
| KS | NEWTON-CITY-COUNTY | EWK | VOR/DME–A. |
| KS | GREAT BEND MUNI | GBD | NDB RWY 35. |
| KS | GREAT BEND MUNI | GBD | NDB–A. |
| KS | GARDEN CITY RGNL | GCK | VOR RWY 35. |
| KS | GARDEN CITY RGNL | GCK | NDB RWY 35. |
| KS | RENNER FLD/GOODLAND MUNI/ | GLD | VOR RWY 30. |
| KS | RENNER FLD/GOODLAND MUNI/ | GLD | VOR/DME RWY 30. |
| KS | HAYS RGNL | HYS | VOR RWY 34. |
| KS | HAYS RGNL | HYS | VOR/DME RWY 16. |
| KS | HAYS RGNL | HYS | VOR/DME RWY 34. |
| KS | WICHITA MID-CONTINENT | ICT | NDB RWY 1R. |
| KS | INDEPENDENCE MUNI | IDP | NDB RWY 35. |
| KS | INDEPENDENCE MUNI | IDP | VOR–A. |
| KS | LIBERAL MID-AMERICA RGNL | LBL | VOR RWY 35. |
| KS | LAWRENCE MUNI | LWC | VOR/DME–A. |
| KS | PHILIP BILLARD MUNI | TOP | VOR RWY 22. |
| KY | TAYLOR COUNTY | AAS | VOR/DME–A. |
| LA | BATON ROUGE METROPOLITAN-RYAN FIELD | BTR | NDB RWY 31. |
| LA | BATON ROUGE METROPOLITAN-RYAN FIELD | BTR | VOR RWY 04L. |
| LA | BATON ROUGE METROPOLITAN-RYAN FIELD | BTR | VOR/DME RWY 22R. |
| LA | GEORGE R CARR MEMORIAL AIR FLD | BXA | VOR/DME–A. |
| LA | SHREVEPORT DOWNTOWN | DTN | VOR RWY 14. |
| LA | HOUMA-TERREBONNE | HUM | VOR RWY 12. |
| LA | FALSE RIVER RGNL | HZR | NDB RWY 36. |
| LA | FALSE RIVER RGNL | HZR | VOR/DME–A. |
| LA | ABBEVILLE CHRIS CRUSTA MEMORIAL | IYA | VOR/DME–A. |
| LA | LAFAYETTE RGNL | LFT | VOR/DME RWY 11. |
| LA | HARRY P WILLIAMS MEMORIAL | PTN | VOR/DME–A. |
| LA | RUSTON RGNL | RSN | NDB RWY 36. |
| LA | RUSTON RGNL | RSN | VOR/DME–A. |
| MA | MINUTE MAN AIR FIELD | 6B6 | NDB–A. |
| MA | NORTHAMPTON | 7B2 | VOR–A. |
| MA | NANTUCKET MEMORIAL | ACK | NDB RWY 24. |
| MA | LAURENCE G. HANSCOM FIELD | BED | NDB RWY 29. |
| MA | GENERAL EDWARD LAWRENCE LOGAN INTL | BOS | VOR/DME RWY 27. |
| MA | GENERAL EDWARD LAWRENCE LOGAN INTL | BOS | VOR/DME RWY 33L. |
| MA | GENERAL EDWARD LAWRENCE LOGAN INTL | BOS | VOR/DME RWY 15R. |
| MA | BEVERLY MUNI | BVY | VOR RWY 16. |
| MA | FITCHBURG MUNI | FIT | NDB RWY 20. |
| MA | MARSHFIELD MUNI-GEORGE HARLOW FIELD | GHG | NDB RWY 6. |
| MA | LAWRENCE MUNI | LWM | NDB RWY 5. |
| MA | MARTHAS VINEYARD | MVY | VOR RWY 24. |
| MA | ORANGE MUNI | ORE | NDB RWY 32. |
| MA | ORANGE MUNI | ORE | NDB RWY 01. |
| MD | BALTIMORE/WASHINGTON INTL THURGOOD MARSHAL | BWI | VOR RWY 10. |
| MD | BALTIMORE/WASHINGTON INTL THURGOOD MARSHAL | BWI | VOR RWY 28. |
| MD | BALTIMORE/WASHINGTON INTL THURGOOD MARSHAL | BWI | VOR/DME RWY 15L. |
| MD | BALTIMORE/WASHINGTON INTL THURGOOD MARSHAL | BWI | VOR/DME RWY 33L. |
| MD | MONTGOMERY COUNTY AIRPARK | GAI | NDB RWY 14. |
| MD | HAGERSTOWN RGNL-RICHARD A HENSON FLD | HGR | VOR RWY 09. |
| MD | OCEAN CITY MUNI | OXB | VOR–A. |
| MD | SALISBURY-OCEAN CITY WICOMICO RGNL | SBY | VOR RWY 32. |
| MD | SALISBURY-OCEAN CITY WICOMICO RGNL | SBY | VOR RWY 23. |
| ME | LITTLEBROOK AIR PARK | 3B4 | NDB–B. |
| ME | AUGUSTA STATE | AUG | VOR/DME RWY 17. |
| ME | AUGUSTA STATE | AUG | VOR/DME RWY 08. |
| ME | AUGUSTA STATE | AUG | VOR/DME–A. |
| ME | BANGOR INTL | BGR | VOR/DME RWY 15. |
| ME | BANGOR INTL | BGR | VOR/DME RWY 33. |
| ME | DEWITT FLD, OLD TOWN MUNI | OLD | NDB RWY 22. |
| ME | NORTHERN MAINE RGNL ARPT AT PRESQUE ISLE | PQI | VOR/DME RWY 01. |
| ME | SANFORD SEACOAST RGNL | SFM | VOR RWY 07. |
| MI | ALPENA COUNTY RGNL | APN | NDB RWY 1. |
| MI | ALPENA COUNTY RGNL | APN | VOR RWY 01. |
| MI | KALAMAZOO/BATTLE CREEK INTL | AZO | NDB RWY 35. |
| MI | KALAMAZOO/BATTLE CREEK INTL | AZO | VOR RWY 17. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| MI | KALAMAZOO/BATTLE CREEK INTL | AZO | VOR RWY 23. |
| MI | KALAMAZOO/BATTLE CREEK INTL | AZO | VOR RWY 35. |
| MI | KALAMAZOO/BATTLE CREEK INTL | AZO | VOR RWY 05. |
| MI | SOUTHWEST MICHIGAN RGNL | BEH | NDB RWY 28. |
| MI | TULIP CITY | BIV | VOR–A. |
| MI | W K KELLOGG | BTL | NDB RWY 23R. |
| MI | W K KELLOGG | BTL | VOR RWY 23R. |
| MI | CHIPPEWA COUNTY INTL | CIU | VOR–A. |
| MI | HOUGHTON COUNTY MEMORIAL | CMX | VOR RWY 13. |
| MI | HOUGHTON COUNTY MEMORIAL | CMX | VOR RWY 25. |
| MI | HOUGHTON COUNTY MEMORIAL | CMX | VOR RWY 31. |
| MI | COLEMAN A. YOUNG MUNI | DET | VOR RWY 33. |
| MI | COLEMAN A. YOUNG MUNI | DET | NDB RWY 15. |
| MI | DELTA COUNTY | ESC | VOR RWY 27. |
| MI | DELTA COUNTY | ESC | VOR RWY 36. |
| MI | DELTA COUNTY | ESC | VOR RWY 09. |
| MI | BISHOP INTL | FNT | VOR RWY 18. |
| MI | BISHOP INTL | FNT | VOR RWY 27. |
| MI | BISHOP INTL | FNT | VOR RWY 09. |
| MI | GAYLORD RGNL | GLR | NDB RWY 9. |
| MI | GAYLORD RGNL | GLR | VOR RWY 09. |
| MI | GERALD R. FORD INTL | GRR | VOR RWY 17. |
| MI | GERALD R. FORD INTL | GRR | VOR RWY 35. |
| MI | SAGINAW COUNTY H.W. BROWNE | HYX | VOR/DME–A. |
| MI | FORD | IMT | NDB RWY 1. |
| MI | FORD | IMT | VOR RWY 31. |
| MI | GOGEBIC-IRON COUNTY | IWD | VOR/DME RWY 27. |
| MI | JACKSON COUNTY-REYNOLDS FIELD | JXN | NDB RWY 24. |
| MI | JACKSON COUNTY-REYNOLDS FIELD | JXN | VOR/DME RWY 24. |
| MI | MANISTEE CO.–BLACKER | MBL | VOR RWY 28. |
| MI | MBS INTL | MBS | VOR RWY 23. |
| MI | MBS INTL | MBS | VOR RWY 32. |
| MI | MBS INTL | MBS | VOR RWY 05. |
| MI | MUSKEGON COUNTY | MKG | VOR–A. |
| MI | MENOMINEE-MARINETTE TWIN COUNTY | MNM | VOR–A. |
| MI | MENOMINEE-MARINETTE TWIN COUNTY | MNM | NDB RWY 3. |
| MI | LIVINGSTON COUNTY SPENCER J. HARDY | OZW | NDB RWY 13. |
| MI | ST CLAIR COUNTY INTL | PHN | NDB RWY 4. |
| MI | PELLSTON RGNL AIRPORT OF EMMET COUNTY | PLN | VOR RWY 23. |
| MI | PELLSTON RGNL AIRPORT OF EMMET COUNTY | PLN | VOR/DME RWY 05. |
| MI | OAKLAND COUNTY INTL | PTK | VOR RWY 09R. |
| MI | OAKLAND COUNTY INTL | PTK | VOR RWY 27L. |
| MI | SAWYER INTL | SAW | NDB RWY 1. |
| MI | SAWYER INTL | SAW | VOR RWY 01. |
| MI | CUSTER | TTF | VOR RWY 03. |
| MI | CHERRY CAPITAL | TVC | NDB RWY 28. |
| MI | WILLOW RUN | YIP | VOR–A. |
| MN | ANOKA COUNTY-BLAINE ARPT(JANES FIELD) | ANE | VOR/DME RWY 27. |
| MN | AUSTIN MUNI | AUM | VOR RWY 35. |
| MN | AUSTIN MUNI | AUM | VOR/DME–A. |
| MN | CHANDLER FIELD | AXN | VOR RWY 22. |
| MN | BAUDETTE INTL | BDE | VOR RWY 30. |
| MN | WILLMAR MUNI-JOHN L RICE FIELD | BDH | VOR RWY 13. |
| MN | BEMIDJI RGNL | BJI | VOR/DME RWY 31. |
| MN | BRAINERD LAKES RGNL | BRD | NDB RWY 23. |
| MN | FLYING CLOUD | FCM | VOR RWY 10R. |
| MN | FERGUS FALLS MUNI-EINAR MICKELSON FLD | FFM | NDB RWY 31. |
| MN | FERGUS FALLS MUNI-EINAR MICKELSON FLD | FFM | VOR RWY 35. |
| MN | FAIRMONT MUNI | FRM | VOR RWY 13. |
| MN | FAIRMONT MUNI | FRM | VOR RWY 31. |
| MN | FAIRMONT MUNI | FRM | VOR/DME RWY 31. |
| MN | GRAND RAPIDS/ITASCA CO-GORDON NEWSTROM FLD | GPZ | VOR RWY 34. |
| MN | RANGE RGNL | HIB | VOR RWY 13. |
| MN | RANGE RGNL | HIB | VOR RWY 31. |
| MN | FALLS INTL | INL | NDB RWY 31. |
| MN | FALLS INTL | INL | VOR RWY 13. |
| MN | FALLS INTL | INL | VOR/DME RWY 31. |
| MN | LITCHFIELD MUNI | LJF | VOR/DME RWY 13. |
| MN | MANKATO RGNL | MKT | VOR RWY 33. |
| MN | SOUTHWEST MINNESOTA RGNL MARSHALL/RYAN FLD | MML | VOR/DME RWY 30. |
| MN | WINONA MUNI-MAX CONRAD FLD | ONA | NDB RWY 30. |
| MN | WINONA MUNI-MAX CONRAD FLD | ONA | VOR–A. |
| MN | WORTHINGTON MUNI | OTG | NDB RWY 29. |
| MN | WORTHINGTON MUNI | OTG | VOR RWY 36. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| MN | OWATONNA DEGNER RGNL | OWA | VOR/DME RWY 30. |
| MN | PARK RAPIDS MUNI-KONSHOK FIELD | PKD | NDB RWY 31. |
| MN | PARK RAPIDS MUNI-KONSHOK FIELD | PKD | VOR RWY 31. |
| MN | WARROAD INTL MEMORIAL | RRT | NDB RWY 31. |
| MN | SOUTH ST PAUL MUNI-RICHARD E. FLEMING FIELD | SGS | NDB–B. |
| MN | ST CLOUD RGNL | STC | VOR/DME RWY 13. |
| MN | THIEF RIVER FALLS RGNL | TVF | NDB RWY 31. |
| MN | THIEF RIVER FALLS RGNL | TVF | VOR RWY 13. |
| MN | THIEF RIVER FALLS RGNL | TVF | VOR RWY 31. |
| MN | THIEF RIVER FALLS RGNL | TVF | VOR/DME RWY 31. |
| MO | CAPE GIRARDEAU RGNL | CGI | VOR RWY 02. |
| MO | CAPE GIRARDEAU RGNL | CGI | VOR RWY 10. |
| MO | FARMINGTON RGNL | FAM | VOR/DME–A. |
| MO | KIRKSVILLE RGNL | IRK | VOR/DME–B. |
| MO | KIRKSVILLE RGNL | IRK | VOR–A. |
| MO | MACON-FOWER MEMORIAL | K89 | VOR/DME RWY 20. |
| MO | CHARLES B. WHEELER DOWNTOWN | MKC | NDB RWY 19. |
| MO | CHARLES B. WHEELER DOWNTOWN | MKC | VOR RWY 19. |
| MO | CHARLES B. WHEELER DOWNTOWN | MKC | VOR RWY 21. |
| MO | CHARLES B. WHEELER DOWNTOWN | MKC | VOR RWY 03. |
| MO | MEXICO MEMORIAL | MYJ | VOR/DME RWY 24. |
| MO | SIKESTON MEMORIAL MUNI | SIK | VOR/DME RWY 02. |
| MO | ROSECRANS MEMORIAL | STJ | VOR OR TACAN RWY 17. |
| MO | ROSECRANS MEMORIAL | STJ | VOR/DME OR TACAN RWY 35. |
| MO | SPIRIT OF ST LOUIS | SUS | NDB RWY 26L. |
| MO | SPIRIT OF ST LOUIS | SUS | NDB RWY 8R. |
| MS | GREENVILLE MID-DELTA | GLH | VOR/DME RWY 18L. |
| MS | GRENADA MUNI | GNF | NDB RWY 13. |
| MS | HARDY-ANDERS FIELD NATCHEZ-ADAMS COUNTY | HEZ | VOR/DME RWY 13. |
| MS | STENNIS INTL | HSA | NDB RWY 18. |
| MS | JOHN BELL WILLIAMS | JVW | NDB RWY 12. |
| MS | MCCHAREN FIELD | M83 | VOR–A. |
| MT | BILLINGS LOGAN INTL | BIL | VOR/DME RWY 28R. |
| MT | BERT MOONEY | BTM | VOR/DME OR GPS–A. |
| MT | BOZEMAN YELLOWSTONE INTL | BZN | VOR RWY 12. |
| MT | BOZEMAN YELLOWSTONE INTL | BZN | VOR/DME RWY 12. |
| MT | WOKAL FIELD/GLASGOW INTL | GGW | NDB RWY 30. |
| MT | GREAT FALLS INTL | GTF | NDB RWY 34. |
| MT | HELENA RGNL | HLN | VOR/DME–B. |
| MT | MISSION FIELD | LVM | VOR–A. |
| MT | FRANK WILEY FIELD | MLS | VOR/DME RWY 04. |
| MT | SIDNEY-RICHLAND MUNI | SDY | NDB RWY 1. |
| MT | YELLOWSTONE | WYS | NDB RWY 1. |
| NC | CLINTON-SAMPSON COUNTY | CTZ | VOR/DME–A. |
| NC | ELIZABETH CITY CG AIR STATION/RGNL | ECG | VOR/DME RWY 10. |
| NC | TARBORO-EDGECOMBE | ETC | NDB RWY 27. |
| NC | COASTAL CAROLINA REGIONAL | EWN | VOR RWY 04. |
| NC | PIEDMONT TRIAD INTL | GSO | VOR RWY 05R. |
| NC | WAYNE EXECUTIVE JETPORT | GWW | VOR–A. |
| NC | HICKORY RGNL | HKY | VOR/DME RWY 24. |
| NC | HENDERSON–OXFORD | HNZ | NDB RWY 6. |
| NC | HARNETT RGNL JETPORT | HRJ | VOR/DME RWY 05. |
| NC | LINCOLNTON-LINCOLN COUNTY RGNL | IPJ | NDB RWY 23. |
| NC | JOHNSTON COUNTY | JNX | NDB RWY 3. |
| NC | TRIANGLE NORTH EXECUTIVE | LHZ | VOR/DME–A. |
| NC | MICHAEL J. SMITH FIELD | MRH | NDB RWY 21. |
| NC | ALBERT J. ELLIS | OAJ | NDB RWY 5. |
| NC | WARREN FIELD | OCW | VOR/DME RWY 05. |
| ND | DEVILS LAKE RGNL | DVL | VOR RWY 21. |
| ND | DEVILS LAKE RGNL | DVL | VOR RWY 31. |
| ND | HECTOR INTL | FAR | VOR OR TACAN RWY 36. |
| ND | HECTOR INTL | FAR | VOR/DME OR TACAN RWY 18. |
| ND | GRAND FORKS INTL | GFK | VOR RWY 35L. |
| ND | SLOULIN FLD INTL | ISN | NDB RWY 29. |
| ND | SLOULIN FLD INTL | ISN | VOR/DME RWY 29. |
| ND | JAMESTOWN RGNL | JMS | NDB RWY 31. |
| ND | JAMESTOWN RGNL | JMS | VOR RWY 31. |
| ND | MINOT INTL | MOT | VOR RWY 13. |
| ND | MINOT INTL | MOT | VOR RWY 31. |
| NE | ALLIANCE MUNI | AIA | VOR RWY 30. |
| NE | BEATRICE MUNI | BIE | VOR RWY 14. |
| NE | CAMBRIDGE MUNI | CSB | NDB RWY 32. |
| NE | KEARNEY RGNL | EAR | NDB RWY 36. |
| NE | KEARNEY RGNL | EAR | VOR RWY 13. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| NE | KEARNEY RGNL | EAR | VOR RWY 36. |
| NE | CENTRAL NEBRASKA RGNL | GRI | VOR/DME RWY 35. |
| NE | BREWSTER FIELD | HDE | VOR/DME–A. |
| NE | HASTINGS MUNI | HSI | VOR RWY 32. |
| NE | HASTINGS MUNI | HSI | VOR RWY 04. |
| NE | WAYNE MUNI/STAN MORRIS FLD | LCG | NDB RWY 23. |
| NE | WAYNE MUNI/STAN MORRIS FLD | LCG | NDB RWY 36. |
| NE | MC COOK BEN NELSON RGNL | MCK | VOR RWY 12. |
| NE | MC COOK BEN NELSON RGNL | MCK | VOR RWY 22. |
| NE | NORFOLK RGNL/KARL STEFAN MEMORIAL FLD | OFK | VOR RWY 01. |
| NE | NORFOLK RGNL/KARL STEFAN MEMORIAL FLD | OFK | VOR RWY 19. |
| NE | SEARLE FIELD | OGA | VOR RWY 26. |
| NE | SEARLE FIELD | OGA | VOR RWY 08. |
| NE | SEARLE FIELD | OGA | VOR/DME RWY 08. |
| NE | COLUMBUS MUNI | OLU | VOR/DME RWY 32. |
| NE | EPPLEY AIRFIELD | OMA | VOR/DME RWY 32L. |
| NE | SIDNEY MUNI/LLOYD W. CARR FIELD | SNY | VOR RWY 13. |
| NE | SIDNEY MUNI/LLOYD W. CARR FIELD | SNY | VOR RWY 31. |
| NH | BOIRE FIELD | ASH | NDB RWY 14. |
| NH | BOIRE FIELD | ASH | VOR–A. |
| NH | BERLIN RGNL | BML | VOR–B. |
| NH | SKYHAVEN | DAW | VOR/DME–A. |
| NH | DILLANT-HOPKINS | EEN | VOR RWY 02. |
| NH | LACONIA MUNI | LCI | NDB RWY 8. |
| NH | LEBANON MUNI | LEB | VOR RWY 25. |
| NH | MANCHESTER | MHT | VOR RWY 35. |
| NH | MANCHESTER | MHT | VOR/DME RWY 17. |
| NH | PORTSMOUTH INTL AT PEASE | PSM | VOR RWY 16. |
| NH | PORTSMOUTH INTL AT PEASE | PSM | VOR RWY 34. |
| NJ | NEWARK LIBERTY INTL | EWR | VOR RWY 11. |
| NJ | NEWARK LIBERTY INTL | EWR | VOR/DME RWY 22L. |
| NJ | NEWARK LIBERTY INTL | EWR | VOR/DME RWY 22R. |
| NJ | MILLVILLE MUNI | MIV | NDB RWY 14. |
| NJ | SOLBERG-HUNTERDON | N51 | VOR–A. |
| NJ | HAMMONTON MUNI | N81 | VOR–A. |
| NJ | TETERBORO | TEB | VOR RWY 24. |
| NJ | TETERBORO | TEB | VOR/DME RWY 06. |
| NJ | TETERBORO | TEB | VOR/DME–A. |
| NJ | TETERBORO | TEB | VOR/DME–B. |
| NJ | CAPE MAY COUNTY | WWD | VOR–A. |
| NM | ALAMOGORDO-WHITE SANDS RGNL | ALM | VOR/DME RWY 03. |
| NM | CAVERN CITY AIR TRML | CNM | VOR RWY 32L. |
| NM | FOUR CORNERS RGNL | FMN | VOR RWY 23. |
| NM | FOUR CORNERS RGNL | FMN | VOR RWY 25. |
| NM | LEA COUNTY RGNL | HOB | VOR OR TACAN RWY 03. |
| NM | LAS VEGAS MUNI | LVS | VOR RWY 02. |
| NM | GRANT COUNTY | SVC | VOR/DME–B. |
| NM | GRANT COUNTY | SVC | VOR–A. |
| NM | TUCUMCARI MUNI | TCC | VOR RWY 21. |
| NV | BATTLE MOUNTAIN | BAM | VOR–A. |
| NV | ELKO RGNL | EKO | VOR/DME–B. |
| NV | ELKO RGNL | EKO | VOR–A. |
| NV | ELY ARPT/YELLAND FLD/ | ELY | VOR–A. |
| NV | DERBY FIELD | LOL | VOR OR GPS–C. |
| NV | RENO/TAHOE INTL | RNO | VOR–D. |
| NY | WATERTOWN INTL | ART | VOR RWY 07. |
| NY | GREATER BINGHAMTON/EDWIN A LINK FIELD | BGM | VOR RWY 10. |
| NY | GREATER BINGHAMTON/EDWIN A LINK FIELD | BGM | VOR/DME RWY 28. |
| NY | CHAUTAUQUA COUNTY/DUNKIRK | DKK | VOR RWY 06. |
| NY | REPUBLIC | FRG | NDB RWY 1. |
| NY | GENESEE COUNTY | GVQ | VOR/DME–A. |
| NY | WESTCHESTER COUNTY | HPN | VOR/DME–A. |
| NY | BROOKHAVEN | HWV | VOR RWY 06. |
| NY | ITHACA TOMPKINS RGNL | ITH | VOR RWY 32. |
| NY | JOHN F KENNEDY INTL | JFK | VOR OR GPS RWY 13L/R. |
| NY | JOHN F KENNEDY INTL | JFK | VOR RWY 04L. |
| NY | CHAUTAUQUA COUNTY/JAMESTOWN | JHW | VOR RWY 25. |
| NY | LA GUARDIA | LGA | VOR/DME–G. |
| NY | LA GUARDIA | LGA | VOR/DME–H. |
| NY | LA GUARDIA | LGA | VOR–F. |
| NY | SULLIVAN COUNTY INTL | MSV | NDB RWY 15. |
| NY | DUTCHESS COUNTY | POU | VOR/DME RWY 06. |
| NY | GRIFFISS INTL | RME | VOR/DME RWY 33. |
| NY | GREATER ROCHESTER INTL | ROC | VOR/DME RWY 04. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| NY | STEWART INTL | SWF | VOR RWY 27. |
| OH | ASHLAND COUNTY | 3G4 | VOR–A. |
| OH | JAMES M. COX DAYTON INTL | DAY | NDB RWY 6R. |
| OH | BELLEFONTAINE RGNL | EDJ | VOR/DME RWY 25. |
| OH | FOSTORIA METROPOLITAN | FZI | VOR–A. |
| OH | CLERMONT COUNTY | I69 | NDB RWY 22. |
| OH | AIRBORNE AIRPARK | ILN | NDB RWY 22R. |
| OH | AIRBORNE AIRPARK | ILN | NDB RWY 4L. |
| OH | AIRBORNE AIRPARK | ILN | VOR RWY 04L. |
| OH | AIRBORNE AIRPARK | ILN | VOR RWY 22R. |
| OH | AIRBORNE AIRPARK | ILN | VOR/DME RWY 22R. |
| OH | FAIRFIELD COUNTY | LHQ | VOR OR GPS–A. |
| OH | LORAIN COUNTY RGNL | LPR | VOR–A. |
| OH | CINCINNATI MUNI AIRPORT-LUNKEN FIELD | LUK | NDB RWY 21L. |
| OH | MARION MUNI | MNN | VOR–A. |
| OH | OHIO STATE UNIVERSITY | OSU | NDB RWY 9R. |
| OH | SPRINGFIELD-BECKLEY MUNI | SGH | VOR RWY 24. |
| OH | BOLTON FIELD | TZR | NDB RWY 4. |
| OH | OHIO UNIVERSITY SNYDER FIELD | UNI | NDB RWY 25. |
| OH | NEWARK-HEATH | VTA | NDB OR GPS RWY 9. |
| OH | NEWARK-HEATH | VTA | VOR–A. |
| OH | YOUNGSTOWN-WARREN RGNL | YNG | NDB RWY 32. |
| OH | YOUNGSTOWN-WARREN RGNL | YNG | VOR–A. |
| OH | ZANESVILLE MUNI | ZZV | VOR OR GPS RWY 22. |
| OK | ADA MUNI | ADH | VOR/DME–A. |
| OK | BARTLESVILLE MUNI | BVO | VOR RWY 17. |
| OK | DURANT RGNL-EAKER FIELD | DUA | VOR/DME RWY 17. |
| OK | CLAREMORE RGNL | GCM | VOR/DME–A. |
| OK | SUNDANCE AIRPARK | HSD | VOR RWY 17. |
| OK | UNIVERSITY OF OKLAHOMA WESTHEIMER | OUN | NDB RWY 35. |
| OK | UNIVERSITY OF OKLAHOMA WESTHEIMER | OUN | NDB RWY 3. |
| OK | RICHARD LLOYD JONES JR | RVS | VOR RWY 1L. |
| OK | RICHARD LLOYD JONES JR | RVS | VOR/DME–A. |
| OK | STILLWATER RGNL | SWO | NDB RWY 17. |
| OR | CORVALLIS MUNI | CVO | NDB RWY 17. |
| OR | SOUTHWEST OREGON RGNL | OTH | NDB RWY 4. |
| PA | SOMERSET COUNTY | 2G9 | NDB RWY 25. |
| PA | LANCASTER | LNS | VOR/DME RWY 08. |
| PA | CARLISLE | N94 | NDB–B. |
| SC | AIKEN MUNI | AIK | NDB RWY 25. |
| SC | AIKEN MUNI | AIK | VOR/DME–A. |
| SC | ANDERSON RGNL | AND | VOR RWY 05. |
| SC | DILLON COUNTY | DLC | NDB RWY 07. |
| SC | GREENVILLE DOWNTOWN | GMU | NDB RWY 1. |
| SC | GREENWOOD COUNTY | GRD | VOR RWY 27. |
| SC | HARTSVILLE RGNL | HVS | NDB RWY 3. |
| SC | MARION COUNTY | MAO | VOR/DME–A. |
| SC | SUMTER MUNI | SMS | NDB RWY 23. |
| SD | ABERDEEN RGNL | ABR | NDB RWY 31. |
| SD | ABERDEEN RGNL | ABR | VOR RWY 31. |
| SD | WATERTOWN RGNL | ATY | NDB RWY 35. |
| SD | WATERTOWN RGNL | ATY | VOR OR TACAN RWY 17. |
| SD | WATERTOWN RGNL | ATY | VOR/DME OR TACAN RWY 35. |
| SD | HURON RGNL | HON | VOR RWY 12. |
| SD | MITCHELL MUNI | MHE | VOR RWY 30. |
| SD | CHAN GURNEY MUNI | YKN | VOR RWY 31. |
| SD | CHAN GURNEY MUNI | YKN | NDB RWY 31. |
| TN | KNOXVILLE DOWNTOWN ISLAND | DKX | VOR/DME–B. |
| TN | DYERSBURG RGNL | DYR | VOR/DME RWY 04. |
| TN | FAYETTEVILLE MUNI | FYM | NDB RWY 20. |
| TN | MCMINN COUNTY | MMI | NDB RWY 20. |
| TN | MOORE-MURRELL | MOR | NDB RWY 5. |
| TN | UPPER CUMBERLAND RGNL | SRB | NDB RWY 4. |
| TN | TULLAHOMA RGNL/WM NORTHERN FIELD | THA | NDB RWY 18. |
| TX | BOWIE MUNI | 0F2 | NDB RWY 35. |
| TX | ABILENE RGNL | ABI | NDB RWY 35R. |
| TX | ALICE INTL | ALI | VOR–A. |
| TX | WHARTON RGNL | ARM | VOR/DME–A. |
| TX | JACK BROOKS RGNL | BPT | VOR RWY 12. |
| TX | JACK BROOKS RGNL | BPT | VOR/DME–D. |
| TX | JACK BROOKS RGNL | BPT | VOR–A. |
| TX | JACK BROOKS RGNL | BPT | VOR–B. |
| TX | JACK BROOKS RGNL | BPT | VOR–C. |
| TX | BROWNSVILLE/SOUTH PADRE ISLAND INTL | BRO | VOR/DME RNAV OR GPS RWY 35. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| TX | BROWNWOOD RGNL | BWD | VOR RWY 17. |
| TX | BAY CITY MUNI | BYY | VOR/DME–A. |
| TX | C DAVID CAMPBELL FIELD-CORSICANA MUNI | CRS | VOR/DME–A. |
| TX | C DAVID CAMPBELL FIELD-CORSICANA MUNI | CRS | VOR/DME–B. |
| TX | DALLAS/FORT WORTH INTL | DFW | VOR RWY 13R. |
| TX | DALLAS/FORT WORTH INTL | DFW | VOR RWY 31L. |
| TX | DALHART MUNI | DHT | VOR RWY 17. |
| TX | DEL RIO INTL | DRT | NDB RWY 13. |
| TX | DEL RIO INTL | DRT | VOR/DME–B. |
| TX | DEL RIO INTL | DRT | VOR–A. |
| TX | DENTON MUNI | DTO | NDB RWY 18. |
| TX | KERRVILLE MUNI/LOUIS SCHREINER FIELD | ERV | NDB RWY 30. |
| TX | WICHITA VALLEY | F14 | VOR/DME–C. |
| TX | GRANBURY RGNL | GDJ | VOR/DME–A. |
| TX | EAST TEXAS RGNL | GGG | NDB RWY 13. |
| TX | ARLINGTON MUNI | GKY | VOR/DME RWY 34. |
| TX | SCHOLES INTL AT GALVESTON | GLS | VOR RWY 14. |
| TX | MAJORS | GVT | VOR/DME RWY 17. |
| TX | NORTH TEXAS RGNL/PERRIN FIELD | GYI | NDB RWY 17L. |
| TX | NORTH TEXAS RGNL/PERRIN FIELD | GYI | VOR/DME–A. |
| TX | WILLIAM P HOBBY | HOU | VOR/DME RWY 30L. |
| TX | WILLIAM P HOBBY | HOU | VOR/DME RWY 35. |
| TX | WILLIAM P HOBBY | HOU | VOR/DME RWY 04. |
| TX | WILLIAM P HOBBY | HOU | VOR/DME–E. |
| TX | VALLEY INTL | HRL | VOR/DME RWY 17R. |
| TX | VALLEY INTL | HRL | VOR/DME RWY 35L. |
| TX | SAN MARCOS MUNI | HYI | NDB RWY 13. |
| TX | SKYLARK FIELD | ILE | VOR–A. |
| TX | MIDLAND AIRPARK | MDD | VOR/DME RWY 25. |
| TX | MC ALLEN MILLER INTL | MFE | VOR RWY 13. |
| TX | MC ALLEN MILLER INTL | MFE | VOR RWY 31. |
| TX | ODESSA-SCHLEMEYER FIELD | ODO | NDB RWY 20. |
| TX | PORT ISABEL-CAMERON COUNTY | PIL | VOR–A. |
| TX | PALESTINE MUNI | PSN | VOR/DME RWY 18. |
| TX | DALLAS EXECUTIVE | RBD | VOR RWY 31. |
| TX | RUSK COUNTY | RFI | VOR/DME–A. |
| TX | SUGAR LAND RGNL | SGR | VOR/DME–A. |
| TX | SULPHUR SPRINGS MUNI | SLR | VOR–A. |
| TX | SHEPPARD AFB/WICHITA FALLS MUNI | SPS | NDB RWY 33L. |
| TX | SHEPPARD AFB/WICHITA FALLS MUNI | SPS | VOR–D. |
| TX | LA PORTE MUNI | T41 | NDB RWY 30. |
| TX | COLLIN COUNTY RGNL AT MC KINNEY | TKI | VOR/DME–A. |
| TX | DRAUGHON-MILLER CENTRAL TEXAS RGNL | TPL | VOR RWY 15. |
| TX | TYLER POUNDS RGNL | TYR | VOR/DME RWY 22. |
| TX | HUNTSVILLE MUNI | UTS | VOR/DME–A. |
| UT | DELTA MUNI | DTA | VOR RWY 35. |
| UT | WENDOVER | ENV | VOR/DME–B. |
| UT | CARBON COUNTY RGNL/BUCK DAVIS FIELD | PUC | VOR/DME RWY 01. |
| UT | SALT LAKE CITY INTL | SLC | VOR/DME RWY 34R. |
| UT | SALT LAKE CITY INTL | SLC | VOR/DME OR TACAN RWY 17. |
| UT | SALT LAKE CITY INTL | SLC | VOR/DME OR TACAN RWY 16L. |
| VA | VIRGINIA TECH/MONTGOMERY EXECUTIVE | BCB | NDB–A. |
| VA | CULPEPER RGNL | CJR | NDB RWY 4. |
| VA | DANVILLE RGNL | DAN | VOR RWY 02. |
| VA | LYNCHBURG RGNL/PRESTON GLENN FLD | LYH | VOR RWY 04. |
| VA | ACCOMACK COUNTY | MFV | VOR/DME RWY 03. |
| VA | HANOVER COUNTY MUNI | OFP | VOR RWY 16. |
| VA | NORFOLK INTL | ORF | VOR RWY 23. |
| VA | NORFOLK INTL | ORF | VOR/DME RWY 05. |
| VA | NEWPORT NEWS/WILLIAMSBURG INTL | PHF | NDB RWY 20. |
| VA | NEWPORT NEWS/WILLIAMSBURG INTL | PHF | NDB RWY 2. |
| VA | NEW RIVER VALLEY | PSK | VOR/DME RWY 06. |
| VA | NEW RIVER VALLEY | PSK | VOR–A. |
| VA | STAFFORD RGNL | RMN | VOR RWY 33. |
| VA | ROANOKE RGNL/WOODRUM FIELD | ROA | VOR/NDB RWY 34. |
| VA | SHENANDOAH VALLEY RGNL | SHD | NDB RWY 5. |
| VI | CYRIL E KING | STT | VOR–A. |
| VT | EDWARD F KNAPP STATE | MPV | VOR RWY 35. |
| VT | RUTLAND-SOUTHERN VERMONT RGNL | RUT | VOR/DME RWY 19. |
| WA | WALLA WALLA RGNL | ALW | NDB RWY 20. |
| WA | ARLINGTON MUNI | AWO | NDB RWY 34. |
| WA | BOWERS FIELD | ELN | VOR–B. |
| WA | SPOKANE INTL | GEG | VOR RWY 03. |
| WA | BOWERMAN | HQM | VOR/DME RWY 24. |

| State | Airport name | ID | Approach procedure |
|---|---|---|---|
| WA | SNOHOMISH COUNTY (PAINE FLD) | PAE | VOR RWY 16R. |
| WA | SNOHOMISH COUNTY (PAINE FLD) | PAE | VOR/DME RWY 16R. |
| WA | RICHLAND | RLD | VOR/DME–A. |
| WA | FELTS FIELD | SFF | VOR RWY 04L. |
| WI | LAKELAND/NOBLE F. LEE MEM. FIELD | ARV | NDB RWY 28. |
| WI | OUTAGAMIE COUNTY RGNL | ATW | VOR/DME RWY 03. |
| WI | OUTAGAMIE COUNTY RGNL | ATW | VOR/DME RWY 21. |
| WI | BURLINGTON MUNI | BUU | VOR–A. |
| WI | MIDDLETON MUNI-MOREY FIELD | C29 | VOR RWY 10. |
| WI | CENTRAL WISCONSIN | CWA | VOR OR GPS–A. |
| WI | CENTRAL WISCONSIN | CWA | VOR/DME RWY 35. |
| WI | BARABOO WISCONSIN DELLS | DLL | VOR–A. |
| WI | CHIPPEWA VALLEY RGNL | EAU | VOR–A. |
| WI | CHIPPEWA VALLEY RGNL | EAU | NDB RWY 22. |
| WI | EAGLE RIVER UNION | EGV | VOR/DME RWY 04. |
| WI | KENOSHA RGNL | ENW | VOR RWY 15. |
| WI | AUSTIN STRAUBEL INTL | GRB | VOR/DME OR TACAN RWY 36. |
| WI | ALEXANDER FIELD SOUTH WOOD COUNTY | ISW | NDB RWY 30. |
| WI | ALEXANDER FIELD SOUTH WOOD COUNTY | ISW | VOR/DME or GPS–A. |
| WI | TRI-COUNTY RGNL | LNR | VOR–A. |
| WI | LA CROSSE MUNI | LSE | NDB RWY 18. |
| WI | MARSHFIELD MUNI | MFI | NDB RWY 5. |
| WI | DANE COUNTY RGNL-TRUAX FIELD | MSN | VOR/DME OR TACAN RWY 14. |
| WI | DANE COUNTY RGNL-TRUAX FIELD | MSN | VOR/DME OR TACAN RWY 18. |
| WI | DANE COUNTY RGNL-TRUAX FIELD | MSN | VOR/DME OR TACAN RWY 32. |
| WI | MANITOWOC COUNTY | MTW | VOR RWY 17. |
| WI | LAWRENCE J TIMMERMAN | MWC | VOR RWY 15L. |
| WI | JOHN H BATTEN | RAC | VOR RWY 04. |
| WI | RHINELANDER-ONEIDA COUNTY | RHI | VOR RWY 09. |
| WI | RICE LAKE RGNL-CARL'S FIELD | RPD | VOR RWY 01. |
| WI | WATERTOWN MUNI | RYV | NDB RWY 23. |
| WI | SHEBOYGAN COUNTY MEMORIAL | SBM | VOR RWY 22. |
| WI | STEVENS POINT MUNI | STE | VOR/DME RWY 21. |
| WI | WAUKESHA COUNTY | UES | VOR–A. |
| WI | DODGE COUNTY | UNU | NDB RWY 2. |
| WI | DODGE COUNTY | UNU | NDB RWY 20. |
| WV | ONA AIRPARK | 12V | VOR–A. |
| WV | FAIRMONT MUNI-FRANKMAN FIELD | 4G7 | VOR/DME–A. |
| WV | RALEIGH COUNTY MEMORIAL | BKW | VOR RWY 19. |
| WV | MERCER COUNTY | BLF | VOR RWY 23. |
| WV | GREENBRIER VALLEY | LWB | VOR RWY 04. |
| WY | CASPER/NATRONA COUNTY INTL | CPR | VOR/DME RWY 03. |
| WY | CHEYENNE RGNL/JERRY OLSON FIELD | CYS | NDB RWY 27. |
| WY | EVANSTON-UINTA COUNTY BURNS FIELD | EVW | VOR/DME RWY 23. |
| WY | GILLETTE-CAMPBELL COUNTY | GCC | VOR/DME RWY 34. |
| WY | JACKSON HOLE | JAC | VOR/DME RWY 19. |
| WY | RIVERTON RGNL | RIW | VOR RWY 28. |
| WY | ROCK SPRINGS-SWEETWATER COUNTY | RKS | VOR/DME RWY 27. |
| WY | TORRINGTON MUNI | TOR | NDB RWY 10 |

**Conclusion**

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Additional Information**

*A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. 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 only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and

identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

*B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued under authority provided by 49 U.S.C. 106(f), 40103(b), and 44701(a)(5), in Washington, DC, on March 31, 2015.

**Abigail Smith,**

*Director, Aeronautical Information Services.*

[FR Doc. 2015–08098 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 1020

**[Docket No. FDA–2015–N–0828]**

## Performance Standards for Ionizing Radiation Emitting Products; Fluoroscopic Equipment; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend a Federal performance standard for ionizing radiation to correct a drafting error regarding fluoroscopic equipment measurement. We are taking this action to ensure clarity and improve the accuracy of the regulations.

**DATES:** Submit electronic or written comments on this proposed rule or its companion direct final rule by June 29, 2015.

**ADDRESSES:** You may submit comments by any of the following methods:

**Electronic Submissions**

Submit electronic comments in the following way:

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

**Written Submissions**

Submit written comments in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Docket No. FDA–2015–N–0828 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Scott Gonzalez, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4641, Silver Spring, MD 20993–0002, 301–796–5889.

**SUPPLEMENTARY INFORMATION:**

### I. What is the background of this Proposed Rule?

FDA is proposing to correct a drafting error regarding fluoroscopic equipment measurement (see § 1020.32 (21 CFR 1020.32)). Specifically, this proposed amendment would change the words ''any linear dimension'' in the current regulation to read ''every linear dimension'' (see 21 CFR 1020.32(b)(4)(ii)(A)). The alternative performance standard, § 1020.32(b)(4)(ii)(B), currently contains the same phrase but would remain unchanged. We are proposing to amend the language to make the performance standards mutually exclusive. This will ensure clarity and improve the accuracy of the regulations.

FDA first proposed the performance standards in the **Federal Register** of December 10, 2002 (67 FR 76056), to account for technological changes in fluoroscopic equipment. That proposed rule did not specify which measurement of the visible area of an image receptor determined the applicable performance standard (67 FR 76056 at 76092). When we addressed comments to that proposed rule in the **Federal Register** of June 10, 2005, we agreed with one comment that adding the words ''any linear dimension'' would clarify the determination of the performance standard (70 FR 33998 at 34007).

FDA ultimately incorporated the phrase in two places, potentially reducing the clarity of the rule (70 FR 33998 at 34040). Section 1020.32(b)(4)(ii) sets performance standards based on a threshold, so the language for each standard should be mutually exclusive. That is, only one standard, and not the other, should apply to the image receptor in question. However, some image receptors may have linear dimensions that are both greater than and less than 34 cm, for example, receptors with a hexagonal shape. In such cases, the performance standards may not be mutually exclusive, so both standards may appear to apply. This proposed rule would amend § 1020.32(b)(4)(ii)(A) to read ''every linear dimension'' to ensure the standards are mutually exclusive. The amendment will improve the clarity and accuracy of the regulations.

### II. Why is FDA publishing this companion Proposed Rule?

This proposed rule is a companion to a direct final rule that corrects a drafting error regarding fluoroscopic equipment measurement. The direct final rule is published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule will provide the procedural framework to finalize a new rule in the event we withdraw the direct final rule because we receive significant adverse comment. We are publishing the direct final rule because we believe it is

noncontroversial, and we do not anticipate any significant adverse comments. If we do not receive any significant adverse comments in response to the direct final rule, we will not take any further action on this proposed rule. Instead, within 30 days after the comment period ends, we intend to publish a notice that confirms the effective date of the direct final rule.

If FDA receives any significant adverse comments regarding the direct final rule, we will withdraw it within 30 days after the comment period ends. We will then proceed to respond to the comments under this companion proposed rule using our usual notice-and-comment rulemaking procedures under the Administrative Procedure Act (APA) (5 U.S.C. 552a, *et seq.*). The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. We will consider any comments that we receive in response to this companion proposed rule to be comments also regarding the direct final rule and vice versa. We will not provide additional opportunity for comment.

A significant adverse comment is one that explains why the rule would be inappropriate (including challenges to the rule's underlying premise or approach), ineffective, or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

You can find additional information about FDA's direct final rulemaking procedures in the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures,'' announced in the **Federal Register** of November 21, 1997 (62 FR 62466).

## III. What is the legal authority for this Proposed Rule?

This proposed rule, if finalized, would amend § 1020.32. FDA's authority to modify § 1020.32 arises from the same authority under which FDA initially issued this regulation, the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, and 381).

## IV. What is the environmental impact of this Proposed Rule?

FDA has determined under 21 CFR 25.30(h) and 25.34(a) 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.

## V. What is the economic analysis of impact of this Proposed Rule?

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, 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 Agencies 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). The Agency believes that this proposed rule would not be a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule does not add any additional regulatory burdens, the Agency has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''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 $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in a 1-year expenditure that meets or exceeds this amount.

The purpose of this proposed rule is to correct a drafting error regarding fluoroscopic equipment measurement in a performance standard for ionizing radiation. The amendment will improve the clarity and accuracy of the regulations. Because this proposed rule is a technical correction and would impose no additional regulatory burdens, this regulation is not anticipated to result in any compliance costs and the economic impact is expected to be minimal.

## VI. How does the Paperwork Reduction Act of 1995 apply to this Rule?

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

## VII. What are the Federalism implications of this Rule?

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has 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, the Agency has concluded 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.

## VIII. How do you submit comments on this Proposed Rule?

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

## List of Subjects in 21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1020 is proposed to be amended as follows:

## PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

■ 1. The authority citation for 21 CFR part 1020 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, 381.

■ 2. Revise § 1020.32(b)(4)(ii)(A) to read as follows:

**§ 1020.32 Fluoroscopic equipment.**

(b) * * *

(4) * * *

(ii) * * *

(A) When every linear dimension of the visible area of the image receptor measured through the center of the visible area is less than or equal to 34 cm in any direction, at least 80 percent of the area of the x-ray field overlaps the visible area of the image.

* * * * *

Dated: April 7, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08361 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2014–0832; FRL–9925–34–Region 9]**

### Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Northern Sierra Air Quality Management District (NSAQMD) portion of the California State Implementation Plan (SIP). The submitted SIP revision contains the District's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). The submitted SIP revision also contains negative declarations for volatile organic compound (VOC) source categories for the NSAQMD. We are proposing to approve the submitted SIP revision under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments on this proposal must arrive by May 13, 2015.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2014–0832, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** James Shears, EPA Region IX, (213) 244–1810, *shears.james@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This proposal addresses the revisions to the NSAQMD portion of the California SIP. In the rules and regulations section of the **Federal Register**, we are approving the SIP revision in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposal. Please note that if we receive adverse comment on a specific provision of this SIP revision and if that provision may be severed from the remainder of the SIP revision, we may adopt as final those provisions of the SIP revision that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 12, 2015.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2015–08419 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2015–0166; FRL–9926–16–Region 3]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing; Flexible Package Printing; and Adhesives, Sealants, Primers, and Solvents

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania. These revisions pertain to control of volatile organic compound (VOC) emissions from offset lithographic printing and letterpress printing, flexible package printing, and adhesives, sealants, primers, and solvents. These revisions also meet the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Technique Guidelines (CTG) recommendations for the following categories: Offset lithographic printing and letterpress printing, flexible package printing, and adhesives, sealants, primers, and solvents. This

action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before May 13, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0166 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Email: *powers.marilyn@epa.gov.*

C. Mail: EPA–R03–OAR–2015–0166, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2015–0166. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT, for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIP to include RACT for sources of volatile organic compound (VOC) emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment. EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' 44 FR 53761 (September 17, 1979).

CTGs are documents issued by EPA intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOC emissions from various sources. Section 183(e)(3)(c) provides that EPA may issue a CTG in lieu of a national regulation as RACT for a product category where EPA determines that the CTG will be substantially as effective as regulations in reducing emissions of VOC in ozone nonattainment areas. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

In 1993, EPA published a draft CTG for offset lithographic printing. 58 FR 59261 (November 8, 1993). After reviewing comments on the draft CTG and soliciting additional information to help clarify those comments, EPA published an alternative control techniques (ACT) document in June 1994 that provided supplemental information for states to use in developing rules based on RACT for offset lithographic printing. In December 1978, EPA published a CTG for graphic arts (rotogravure printing and flexographic printing) that included flexible package printing (Publication No. EPA–450/2–78–033; December 1978). In 1994, EPA developed an ACT document for industrial cleaning solvents (Publication No. EPA–453/R–94–015; February 1994). After reviewing the 1978/1993/1994 CTGs and ACTs for these industries, conducting a review of currently existing state and local VOC emission reduction approaches for these industries, and taking into account any information that has become available since then, EPA developed new CTGs entitled *Control Techniques Guidelines for Offset Lithographic and Letterpress Printing* (Publication No. EPA 453/R–06–002; September 2006); *Control Techniques Guidelines for Flexible Package Printing* (Publication No. EPA 453/R–06–003; September 2006); *Control Techniques Guidelines for Industrial Cleaning Solvents* (Publication No. EPA 453/R–06–001; September 2006). The CTG recommendations may not apply to a particular situation based upon the circumstances of a specific source. Regardless of whether a state chooses to implement the recommendations contained within the CTGs through state rules, or to issue state rules that adopt different approaches for RACT for VOCs, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

## II. Summary of SIP Revision and EPA Analysis

On August 27, 2014, the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision to EPA in order to add regulations to the Pennsylvania SIP which essentially adopt EPA CTGs for offset lithographic and letterpress printing, flexible package printing, and adhesives, sealants, primers, and solvents. These regulations are contained in Title 25 of the Pennsylvania Code (Pa Code) Chapters 129 and 130. The pertinent regulations

establish: (1) The applicability of the regulations to facilities for offset lithographic printing and letterpress printing, flexible package printing, and adhesives, sealants, primers, and solvents; (2) certain exemptions; (3) recordkeeping and work practice requirements; and (4) emission limitations.

EPA's review of the new and revised regulations submitted by PADEP indicates that the submitted revisions of 25 Pa Code 121.1, 129.51, 129.67, 129.67a, and 129.67b meet the requirements to adopt RACT for sources located in Pennsylvania covered by EPA's CTG recommendations for control of VOC emissions for the following categories: Offset lithographic printing, letterpress printing, and flexible package printing. In addition, the submitted revisions to 25 Pa Code 129.77 and 130.703 continue to meet the requirements to adopt RACT for adhesives and solvents as approved on September 26, 2012. *See* 77 FR 59090. EPA finds the Pennsylvania regulations which adopt the equivalent of the specific EPA CTG recommendations meet CAA requirements for RACT in sections 172 and 182 of the CAA. More detailed information on these provisions as well as a detailed summary of EPA's review and rationale for proposing to approve this SIP revision can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2015–0166. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## III. Proposed Action

EPA is proposing to approve the August 27, 2014 Pennsylvania SIP revision adding new regulations 25 Pa Code 129.67a and 129.67b and revising regulations 25 Pa Code 121.1, 129.51, 129.67, 129.77, and 130.703 as the SIP revision meets CAA requirements for SIPs in sections 110, 172 and 182.

## IV. Incorporation by Reference

In this rule the EPA is proposing to include, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the PADEP rules regarding control of VOC emissions from offset lithographic printing, letterpress printing, flexible package printing, and adhesives, sealants, primers, and solvents as described in section II of this proposed action. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to Pennsylvania's adoption of CTG recommendations for offset lithographic printing and letterpress printing, flexible package printing, and adhesives, sealants, primers, and solvents, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 31, 2015.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2015–08462 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2013–0593; FRL–9925–95–Region–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Virginia—Prevention of Significant Deterioration; Amendment to the Definition of ''Regulated NSR Pollutant'' Concerning Condensable Particulate Matter

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve a July 25, 2013 State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) for the Commonwealth of Virginia. The revision includes a correction to the definition of ''regulated NSR [New Source Review] pollutant'' as it relates to condensable particulate matter under Virginia's Prevention of Significant Deterioration (PSD) program. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by May 13, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0593 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Email: *campbell.dave@epa.gov.*

C. Mail: EPA–R03–OAR–2013–0593, David Campbell, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0593. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: March 25, 2015.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2015–08414 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MB Docket No. 15–71; FCC 15–34]**

### Television Market Modification; Statutory Implementation

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes satellite television market modification rules to implement section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (''STELAR''). The STELAR amended the Communications Act and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights. In this document, the Commission proposes to revise the current cable market modification rule to apply also to satellite carriage, while adding provisions to address the unique nature of satellite television service. The document also proposes to make conforming changes to the cable market modification rules and considers whether to make any other changes to the current market modification rules.

**DATES:** Comments are due on or before May 13, 2015; reply comments are due on or before May 28, 2015. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 12, 2015.

**ADDRESSES:** Interested parties may submit comments, identified by MB Docket No. 15–71, by any of the following methods:

- Federal Communications Commission (FCC) Electronic Comment Filing System (ECFS) Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Mail: U.S. Postal Service first-class, Express, and Priority mail must be addressed to the FCC Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- Hand or Messenger Delivery: All hand-delivered or messenger-delivered paper filings for the FCC Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554.
- 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 section IV. ''PROCEDURAL MATTERS'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._*

*Fraser@omb.eop.gov* or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), FCC 15–34, adopted and released on March 26, 2015. The full text of this document is available electronically via the FCC's Electronic Comment Filing System (ECFS) Web site at *http://fjallfoss.fcc.gov/ecfs2/* or via the FCC's Electronic Document Management System (EDOCS) Web site at *http://fjallfoss.fcc.gov/edocs_public/*. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

## Document Summary

## I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we propose satellite television ''market modification'' rules to implement section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (''STELA Reauthorization Act'' or ''STELAR'').[1] The STELAR amended the Communications Act (''Communications Act'' or ''Act'') and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights.[2] The Commission previously had such authority to modify markets only in the cable carriage context.[3] With section 102 of the STELAR, Congress provides regulatory parity in this regard in order to promote consumer access to in-state and other relevant television programming.[4] Congress' intent through this provision of STELAR, and the Commission's actions in this NPRM, seek to address satellite subscribers' inability to receive in-state programming in certain areas, sometimes called ''orphan counties.'' [5] In this NPRM, consistent with Congress' intent that the Commission model the satellite market modification process on the current cable market modification process, we propose to implement section 102 of the STELAR by revising the current cable market modification rule, section 76.59, to apply also to satellite carriage, while adding provisions to the rules to address the unique nature of satellite television service.[6] In addition to establishing rules for satellite market modifications, section 102 of the STELAR directs us to consider whether we should make changes to the current cable market modification rules,[7] and it also makes certain conforming amendments to the cable market modification statutory provision.[8] Accordingly, as part of our implementation of the STELAR, we propose to make conforming changes to the cable market modification rules and consider whether we should make any other changes to the current cable market modification rules. The STELAR requires the Commission to issue final rules in this proceeding on or before September 4, 2015.[9]

## II. Background

2. The STELAR, enacted December 4, 2014, is the latest in a series of statutes that have amended the Communications Act and Copyright Act to set the parameters for the satellite carriage of television broadcast stations. The 1988 Satellite Home Viewer Act (SHVA) first established a ''distant'' statutory copyright license to enable satellite carriers to offer subscribers who could not receive the over-the-air signal of a broadcast station access to broadcast

[1] The STELA Reauthorization Act of 2014 (STELAR), sec. 102, Public Law 113–200, 128 Stat. 2059, 2060–62 (2014) (codified at 47 U.S.C. 338(l)). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.). This proceeding implements STELAR sec. 102 (titled ''Modification of television markets to further consumer access to relevant television programming''), 128 Stat. at 2060–62, and the related statutory copyright license provisions in STELAR sec. 204 (titled ''Market determinations''), 128 Stat. at 2067 (codified at 17 U.S.C. 122(j)(2)(E)).

[2] STELAR secs. 102, 204, 128 Stat. at 2060–62, 2067. STELAR sec. 102(a) amends section 338 of the Act by adding a new paragraph (l). 47 U.S.C. 338(l) (titled ''Market Determinations''). STELAR sec. 102(b) also makes conforming amendments to the cable market modification provision at 47 U.S.C. 534(h)(1)(C). STELAR sec. 204 amends the statutory copyright license for satellite carriage of ''local'' stations in 17 U.S.C. 122 to cover market modifications in accordance with 47 U.S.C. 338(l). 17 U.S.C. 122(j)(2)(E). We note that, like the cable provision, the STELAR provision pertains only to ''commercial'' stations, thus excluding noncommercial stations from seeking market modifications. *See* 47 U.S.C. 338(l)(1).

[3] *See* 47 U.S.C. 534(h)(1)(C). This section was added to the Act by the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992), as part of the cable must-carry/retransmission consent regime for carriage of local television stations. *See also* 47 CFR 76.59.

[4] *See* title of STELAR sec. 102, ''Modification of Television Markets to Further Consumer Access to Relevant Television Programming.'' *See also* 47 U.S.C. 534(h)(1)(C)(ii)(III) (directing the Commission to consider whether a market modification would ''promote consumers' access to television broadcast station signals that originate in their State of residence''). There was no final Report issued to accompany the final version of the STELAR bill (H. R. 5728, 113th Cong.) as it was enacted. Because section 102 of the STELAR was added from the Senate predecessor bill (S. 2799, the Satellite Television Access and Viewer Rights Act (STAVRA)), we therefore look to the Senate Report No. 113–322 (dated December 12, 2014) accompanying this predecessor bill for the relevant legislative history for this provision. *See* Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113–322 (2014) (''*Senate Commerce Committee Report*'').

[5] We note that the Commission has sometimes referred to the situation in which a county in one state is assigned to a neighboring state's local television market and, therefore, satellite subscribers residing in such county cannot receive some or any broadcast stations that originate in-state as the ''orphan county'' problem. The inability of satellite subscribers located in ''orphan counties'' to access in-state programming has been the subject of some congressional interest. *See, e.g.,* Orphan County Telecommunications Rights Act, H.R. 4635, 113th Cong. (2014); Colorado News, Emergency, Weather, and Sports Act, S. 2375, 113th Cong. (2014); Four Corners Television Access Act, H.R. 4469, 112th Cong. (2012); Letting Our Communities Access Local Television Act, S. 3894, 111th Cong. (2010); Local Television Freedom Act, H.R. 3216, 111th Cong. (2009).

[6] *See* 47 CFR 76.59. As discussed herein, we propose to revise section 76.59 of our rules to apply to both cable systems and satellite carriers. We note Congress' intent that the process established by the Commission under the section 102 of the STELAR be ''modeled'' on the current cable market modification process. *See Senate Commerce Committee Report* at 10. However, the STELAR recognizes the inherent difference between cable and satellite television service with provisions specific to satellite. *See* 47 U.S.C. 338(l)(3)(A), (5).

[7] STELAR sec. 102(d) directs the Commission to consider as part of this rulemaking whether the ''procedures for the filing and consideration of a written request under sections 338(l) and 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 338(l); 534(h)(1)(C)) fully effectuate the purposes of the amendments made by this section, and update what it considers to be a community for purposes of a modification of a market under section 338(l) or 614(h)(1)(C) of the Communications Act of 1934.''

[8] *See* STELAR sec. 102(b) (amending 47 U.S.C. 534(h)(1)(C)(ii)).

[9] STELAR sec. 102(d)(1).

programming via satellite.[10] The 1999 Satellite Home Viewer Improvement Act (SHVIA) established a ''local'' statutory copyright license and expanded satellite carriers' ability to offer broadcast television signals directly to subscribers by permitting carriers to offer ''local'' broadcast signals.[11] The 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA) reauthorized the distant signal statutory copyright license until December 31, 2009 and expanded that license to allow satellite carriers to carry ''significantly viewed'' stations.[12] The 2010 Satellite Television Extension and Localism Act (STELA) extended the distant signal statutory copyright license through December 31, 2014, moved the significantly viewed signal copyright provisions to the local statutory copyright license (which does not expire), and revised the ''significantly viewed'' provisions to facilitate satellite carrier use of that option.[13] With the STELAR, Congress extends the distant signal statutory copyright license for another five years, through December 31, 2019 and, among other things, authorizes market modification in the satellite carriage context and revises the market modification provisions for cable to promote parity for satellite and cable subscribers and competition between satellite and cable operators.[14]

3. Section 338 of the Act authorizes satellite carriage of local broadcast stations into their local markets, which is called ''local-into-local'' service.[15] Specifically, a satellite carrier provides ''local-into-local'' service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.[16] Generally, a television station's ''local market'' is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).[17] DMAs describe each television market in terms of a unique geographic area (group of counties) and are defined by Nielsen based on measured viewing patterns.[18] The United States is divided into 210 DMA markets. (DMAs frequently cross state lines and thus may include counties from multiple states.) Unlike cable operators, satellite carriers are not required to carry local broadcast television stations. However, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.[19] This is commonly referred to as the ''carry one, carry all'' requirement. If a broadcaster elects retransmission consent, the satellite carrier and broadcaster negotiate the terms of a retransmission consent agreement. With respect to those stations electing mandatory carriage, satellite carriers are generally not required to carry a station if the station's programming ''substantially duplicates'' that of another station carried by the satellite carrier in the DMA, and satellite carriers are not required to carry more than one network affiliate station in a DMA (even if the affiliates do not substantially duplicate their programming), unless the stations are licensed to communities in different states.[20] Satellite carriers are also not required to carry an otherwise qualified station if the station fails to provide a good quality signal to the satellite carrier's local receive facility.[21]

4. Section 102 of the STELAR, which adds section 338(l) of the Act, creates a satellite market modification regime very similar to that in place for cable, while adding provisions to address the unique nature of satellite television service.[22] Market modification, which has been available in the cable carriage context since 1992, will allow the Commission to modify the local television market of a commercial television broadcast station to enable those broadcasters and satellite carriers to better serve the interests of local communities.[23] Market modification provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming.[24] To better reflect market realities and effectuate the purposes of this provision, section 338(l), like the corresponding cable provision in section 614(h)(1)(C), permits the Commission to add communities to or delete communities from a station's local television market following a written request.[25] Furthermore, as in the cable carriage context, the Commission may determine that particular communities are part of more than one television market.[26] Similar to the cable carriage context, when the Commission modifies a station's market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or retransmission consent) by the applicable satellite

[10] The Satellite Home Viewer Act of 1988 (SHVA), Public Law 100–667, 102 Stat. 3935, Title II (1988); 17 U.S.C. 119 (distant statutory copyright license).

[11] The Satellite Home Viewer Improvement Act of 1999 (SHVIA), Public Law 106–113, 113 Stat. 1501 (1999); 17 U.S.C. 122 (local statutory copyright license).

[12] The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Public Law 108–447, 118 Stat 2809 (2004).

[13] The Satellite Television Extension and Localism Act of 2010 (STELA), Public Law 111–175, 124 Stat. 1218, 1245 (2010). *See also Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA),* MB Docket No. 10–148, Report and Order and Order on Reconsideration, FCC 10–193, 75 FR 72968, Nov. 29, 2010 *(STELA Significantly Viewed Report and Order).*

[14] In section 102 of the STELAR, Congress intended to ''create a television market modification process for satellite carriers similar to the one already used for cable operators.'' *Senate Commerce Committee Report* at 6. The STELAR also makes a variety of reforms to the video programming distribution laws and regulations that are not relevant here to our implementation of this section.

[15] *See* 47 U.S.C. 338(a)(1).

[16] 47 CFR 76.66(a)(6).

[17] *See* 17 U.S.C. 122(j)(2); 47 CFR 76.66(e) (defining a television broadcast station's local market for purposes of satellite carriage as the DMA in which the station is located). We note that a commercial television broadcast station's local market for purposes of cable carriage is also generally defined as the DMA in which the station is located. *See* 47 U.S.C. 534(h)(1)(C); 47 CFR 76.55(e)(2).

[18] The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and by MVPD distribution.

[19] *See* 17 U.S.C. 122; 47 U.S.C. 338(a)(1); 47 CFR 76.66(b)(1).

[20] *See* 47 U.S.C. 338(c)(1); 47 CFR 76.66(h). *See also Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues,* CS Docket Nos. 00–96 and 99–363, Report and Order, FCC 00–417, 66 FR 7410, at para. 80, Jan. 23, 2001 (*DBS Broadcast Carriage Report and Order*).

[21] *See* 47 U.S.C. 338(b)(1); 47 CFR 76.66(g)(1).

[22] *See* 47 U.S.C. 338(l), 534(h)(1)(C).

[23] See In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010, MB Docket No. 10–238, Report, DA 11–1454, at para. 55–59 (MB rel. Aug. 29, 2011) (''In-State Programming Report'') (stating that ''market modifications could potentially address special situations in underserved areas and facilitate greater access to local information''). See also Broadcast Localism, MB Docket No. 04–233, Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07–218, 73 FR 8255 at paras. 49–50, Feb. 13, 2008 (''Broadcast Localism Report'').

[24] *Broadcast Localism Report* at para. 50. The Commission has observed that, in some cases, general reliance on DMAs to define a station's market may not provide viewers with the most local programming. Certain DMAs cross state borders and, in such cases, current Commission rules sometimes require carriage of the broadcast signal of an out-of-state station rather than that of an in-state station. The Commission has observed that such cases may weaken localism, since viewers are often more likely to receive information of local interest and relevance—particularly local weather and other emergency information and local news and electoral and public affairs—from a station located in the state in which they live. *Id.* at paras. 49–50.

[25] 47 U.S.C. 338(l)(1), 534(h)(1)(C).

[26] *Id.* 338(l)(2)(A).

carrier in the local market.[27] Likewise, if the Commission modifies a station's market to delete a community, the station is considered ''distant'' and loses its right to assert mandatory carriage (or retransmission consent) by the applicable satellite carrier in the local market. We note that, in the cable carriage context, market modifications pertain to specific stations in specific cable communities and apply to the specific cable system named in the petition.[28]

5. Section 338(l) states that, in deciding requests for market modifications, the Commission must afford particular attention to the value of localism by taking into account the following five factors:

- Whether the station, or other stations located in the same area—have been historically carried on the cable system or systems within such community; and have been historically carried on the satellite carrier or carriers serving such community;
- whether the television station provides coverage or other local service to such community;
- whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;
- whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.[29]

These statutory factors largely mirror those originally set forth for cable in section 614(h)(1)(C)(ii) of the Act. To the extent the factors differ from the previous factors applicable to cable, section 102 of the STELAR makes conforming changes to the cable factors.[30] These include adding a fifth factor (inserted as factor number three) to section 614(h)(1)(C)(ii) to ''promote consumers' access to television broadcast station signals that originate in their State of residence.'' [31] Thus, STELAR creates parallel factors for satellite and cable.[32]

6. The STELAR, however, provides a unique exception applicable only in the satellite context, providing that a market modification shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.[33]

Also unique to satellite, the STELAR provides that a market modification will not have ''any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339 [of the Act].'' [34] Like the cable provision, section 338(l) gives the Commission 120 days to act on a request for market modification and does not allow a carrier to delete from carriage the signal of a commercial television station during the pendency of any market modification proceeding.[35]

## III. Discussion

7. Consistent with the STELAR's goal of regulatory parity, we propose to amend section 76.59 of our rules—the current cable market modification rule—to apply to the satellite context.[36] We also propose to amend section 76.59 to reflect the STELAR provisions that uniquely apply to satellite carriers. The STELAR also directs us to update our definition of a ''community'' for purposes of market modification and, below, we seek comment in this regard. We seek comment on the specific rule proposals and tentative conclusions contained herein. We also seek comment on any alternative approaches.

### *A. Requesting Market Modification*

8. Consistent with the current cable requirement in section 76.59, we propose to allow either the affected commercial broadcast station or satellite carrier to file a satellite market modification request.[37] Section 338(l)(1) of the Act contains very similar language to the corresponding cable statutory provision in section 614(h)(1)(C)(i) of the Act.[38] Like the cable provision, section 338(l)(1) permits the Commission to modify a local television market ''following a written request,'' but does not specify the appropriate party to make such requests.[39] Section 102(d)(2) of the STELAR further directs the Commission to ensure in both the cable and satellite contexts that ''procedures for the filing and consideration of a written request . . . fully effectuate the purposes of the amendments made by this section.'' [40] The Commission found in the cable context that the involved broadcaster and cable operator are the only appropriate parties to file market

[27] Section 204 of the STELAR amends the local statutory copyright license in 17 U.S.C. 122 so that when the Commission modifies a station's market for purposes of satellite carriage rights, the station is considered local and is covered by the local statutory copyright license. *See* 17 U.S.C. 122(j)(2)(E); 47 U.S.C. 338. *See also* 17 U.S.C. 111(f)(4) (defining ''local service area of a primary transmitter'' for cable carriage copyright purposes); 47 U.S.C. 534(h)(1)(C).

[28] See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Docket No. 92–259, Report and Order, FCC 93–144, 58 FR 17350, at para. 47, April 2, 1993 (Must Carry Order) (stating that ''the statute is intended to permit the modification of a station's market to reflect its individual situation''); 47 CFR 76.59.

[29] 47 U.S.C. 338(l)(2)(B)(i) through (v).

[30] *See* 47 U.S.C. 534(h)(1)(C)(ii), as amended by STELAR sec. 102(b).

[31] *See id*. 534(h)(1)(C)(ii)(III) (''whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence'').

[32] Upon completion of this rulemaking proceeding, we will implement section 102(c) of the STELAR by creating a consumer guide that will explain the market modification rules and procedures as revised and adopted in this proceeding, and by posting such guide on the Commission's Web site. Section 102(c) requires the Commission to ''make information available to consumers on its Web site that explains the market modification process.'' STELAR 102(c); 47 U.S.C.A. 338 Note. Such information must include: ''(1) who may petition to include additional communities within, or exclude communities from, a—(A) local market (as defined in section 122(j) of title 17, United States Code); or (B) television market (as determined under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C))); and (2) the factors that the Commission takes into account when responding to a petition described in paragraph (1).'' *See* 47 U.S.C. 338(l)(2)(B)(i) through (v); 47 U.S.C. 534(h)(1)(C)(ii)(I) through (V).

[33] 47 U.S.C. 338(l)(3)(A).

[34] 47 U.S.C. 338(l)(5).

[35] 47 U.S.C. 338(l)(3)(B), (4).

[36] *See* 47 CFR 76.59.

[37] *See* 47 CFR 76.59(a) (allowing either a broadcast station or a cable system to file market modification requests).

[38] 47 U.S.C. 338(l)(1) (''Following a written request, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its local market or exclude communities from such station's local market to better effectuate the purposes of this section.) *See* 47 U.S.C. 534(h)(1)(C)(i) (''For purposes of this section, a broadcasting station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section . . . .'').

[39] 47 U.S.C. 338(l)(1).

[40] STELAR sec. 102(d)(2) directs the Commission to consider as part of this rulemaking whether the ''procedures for the filing and consideration of a written request under sections 338(l) and 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 338(l); 534(h)(1)(C)) fully effectuate the purposes of the amendments made by this section.'' *See* 47 U.S.C.A. 338 Note.

modification requests.[41] The Commission reasoned that ''the fact that Congress made must carry an elective choice for broadcasters diminishes the argument that third parties have standing to demand carriage of a broadcast station on a cable system. A subscriber's ability to receive the benefits provided from must carry is predicated upon a station's election to exercise its rights under the statute. No statute or Commission rule requires a broadcaster to allow its signal to be carried on a local cable system because another party wishes to view it. Instead, broadcasters are given a choice whether to demand carriage under must carry, to negotiate carriage under the retransmission consent provisions, or not to be carried on a particular cable system at all.'' [42] Thus, only these entities have carriage rights or obligations at stake, giving them a legitimate basis for filing such requests.

9. Without the active participation of the affected broadcaster, modifying the market of a particular television station, in itself, would not result in consumer access to that station.[43] This reasoning appears to apply to the satellite context as well. Thus, a market modification would serve little purpose without the cooperation of the involved broadcaster or MVPD having carriage rights or obligations. We seek comment on our proposal and these tentative conclusions. We also seek comment on any alternative approaches. We note, for example, that some local governments have previously sought the ability to petition for market modifications on behalf of their citizens.[44] We recognize that seeking and providing carriage is a business decision by the involved broadcaster and satellite carrier and, therefore, we tentatively conclude to limit the participation of local governments and individuals to filing comments in support of, or in opposition to, particular market modification requests, for the reasons discussed in this and the preceding paragraph. We, nevertheless, seek comment on this tentative conclusion and how else satellite subscribers or their representatives can meaningfully advocate for the receipt of in-state programming via satellite.

10. Consistent with the current cable requirement in section 76.59, we propose to require broadcasters and satellite carriers to file market modification requests for satellite carriage purposes in accordance with the procedures for filing Special Relief petitions in section 76.7 of the rules.[45] Consistent with section 76.7, we propose that a petitioner must serve a copy of its market modification request on any MVPD operator, station licensee, permittee, or applicant, or other interested party who is likely to be directly affected if the relief requested is granted, and we propose to amend section 76.7(a)(3), accordingly, to reference ''any MVPD operator.'' [46] We seek comment on our proposal. Because, as noted above, some local governments have expressed interest in orphan county issues, we also seek comment on whether franchising authorities [47] or certain local government entities (such as cities, counties or towns) that may represent subscribers and local viewers in affected communities should be considered ''interested parties'' and served with market modification requests. We seek specific comment on whether to require petitioners seeking only a satellite carriage market modification to serve the relevant franchising authority. We note that while the Commission has found that a franchising authority represents the interests of subscribers and other local viewers in the cable context,[48] franchising authorities currently have no role in satellite regulation.

*B. Statutory Factors and Evidentiary Requirements*

11. As discussed above, the purpose of market modifications is to permit adjustments to a particular station's local television market (which is initially defined by the DMA in which it is located) to better reflect localism and ensure that satellite subscribers receive the broadcast stations most relevant to them.[49] To this end, the STELAR requires the Commission to consider five statutory factors when evaluating market modification requests. As noted, the STELAR added a fifth factor (inserted as the new third statutory factor) for both cable and satellite to ''promote consumers' access to television broadcast station signals that originate in their State of residence.'' [50] The legislative history indicates Congress' concern that ''many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances,'' may ''lack access to local television programming that is relevant to their everyday lives.'' [51] The legislative history further indicates Congress' intent that the Commission ''consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations.'' [52] We tentatively conclude that this new third statutory factor is intended to favor a market modification to add a community if doing so would increase consumer access to in-state programming. We also tentatively conclude, however, that this new third statutory factor is not intended to bar a market modification simply because it would not result in increased consumer access to in-state programming. In such cases, we believe this new third

[41] *See John Wiegand* v. *Post Newsweek Pacifica Cable, Inc.,* CSR 4179–M, Memorandum Opinion and Order, FCC 01–239 (rel. Aug. 24, 2001) (''*Wiegand* v. *Post Newsweek''*) (limiting standing in the must carry and market modification contexts to the affected broadcaster or cable operator); *Must Carry Order,* at para. 46.

[42] See Must Carry Order, at para. 46.

[43] *See Wiegand* v. *Post Newsweek,* at para. 11(''[t]he granting of a request to expand the market of a television station merely allows a broadcaster the option to seek must carry status on cable systems added to its market. A broadcaster is not required to seek carriage of its signal on all of the cable systems in its market.'').

[44] See In-State Programming Report, at para. 58.

[45] 47 CFR 76.59(b). A fee is generally required for the filing of Special Relief petitions; 47 CFR 1.1104, 1.1117, 76.7. We remind filers that Special Relief petitions must be submitted electronically using the Commission's Electronic Comment Filing System (ECFS). *See Media Bureau Announces Commencement of Mandatory Electronic Filing for Cable Special Relief Petitions and Cable Show Cause Petitions Via the Electronic Comment Filing System,* Public Notice, DA 11–2095 (MB rel. Dec. 30, 2011). Petitions must be initially filed in MB Docket No. 12–1. *Id.*

[46] *See* 47 CFR 76.7(a)(3). While our rules currently state that documents that are required to be served must be served in paper form unless the parties agree to another method of service, 47 CFR 1.47(d), we take notice of the Commission's broader efforts to modernize our procedures where possible. *See, e.g., Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* GC Docket No. 10–44, Order, FCC 14–183, 80 FR 1586, para. 26, Jan. 13, 2015 (authorizing Commission staff to accept secs. 214 and 215 filings in electronic form); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act,* GC Docket No. 10–44, Order, FCC 14–179, 79 FR 73844, para. 2, Dec. 12, 2014 (mandating electronic filing of secs. 208 and 224 complaints). Service of market modification requests seems ripe for modernization as well. In the near term, the Commission will explore whether and how this and other types of required filings might transition to electronic form.

[47] We recognize, for example, that in several states, the state acts as the franchising authority instead of a local government.

[48] *See KMSO–TV, Inc.,* CSR–883, Memorandum Opinion and Order, 58 FCC2d 414, 415, para. 3 (1976).

[49] *See* 47 U.S.C. 338(l)(2)(B), 534(h)(1)(C)(ii) (requiring the Commission to ''afford particular attention to the value of localism'' by taking into account the five statutory factors).

[50] 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III). We will refer to this new factor as the ''third statutory factor.''

[51] Senate Commerce Committee Report at 11.

[52] *Id.*

statutory factor would be inapplicable.[53] We seek comment on these tentative conclusions and any alternative interpretations.

12. We tentatively conclude that the evidentiary requirements currently required in section 76.59 continue to be appropriate to support and evaluate market modification petitions. Specifically, we propose that market modification requests for both satellite carriers and cable system operators must include the following evidence:

- A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- Noise-limited service contour maps (for digital stations) or Grade B contour maps (for analog stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.
- Available data on shopping and labor patterns in the local market.
- Television station programming information derived from station logs or the local edition of the television guide.
- Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- Published audience data for the relevant station showing its average all day audience (*i.e.,* the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.[54]

In 1999, the Commission adopted this standardized evidence approach for market modifications in the cable context in an effort to promote administrative efficiency, given the 120-day time period for Commission action on such petitions.[55] We seek comment on whether to do the same for satellite and on whether any of these evidentiary requirements are not relevant in the satellite context. We further seek comment on whether any other evidence should be required to evaluate the statutory factors.

13. In particular, we seek comment on what evidence could be used to demonstrate the new ''third statutory factor,'' which seeks to promote consumer access to in-state programming.[56] For example, in situations in which this third statutory factor would apply, should we require the petitioner to show that the station at issue is licensed to a community within the state in which the modification is requested and that the DMA at issue lacks any (or an adequate number of) in-state stations? We note that the current rule already requires a petitioner to provide television station programming information. Would this information provide sufficient evidence of whether the station at issue offers programming (*e.g.,* news, sports, weather, political, talk shows, etc.) specifically covering in-state issues? Should we require a petitioner to provide a list of advertisers, which would show that the station is used to attract viewers to local businesses? In addition, are there any satellite-specific evidentiary showings that we should require separate and apart from the six evidentiary showings described above?

14. In addition, we tentatively conclude to revise section 76.59(b)(2) of the rules to add a reference to the digital noise-limited service contour (NLSC), which is the relevant service contour for a station's digital signal.[57] Section 76.59(b)(2) requires petitioners seeking a market modification to provide Grade B contour maps delineating the station's technical service area;[58] however the Grade B contour defines an analog television station's service area.[59] Since the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations and, therefore, the Commission uses the NLSC set forth in 47 CFR 73.622(e),[60] in place of the analog Grade B contour set forth in 47 CFR 73.683(a), to describe a full power station's technical service area.[61] Since the DTV transition, the Media Bureau has required full power stations to provide NLSC maps, in place of Grade B contour maps, for purposes of cable market modifications.[62] Therefore, we tentatively conclude that section 76.59(b)(2) should be updated for purposes of market modifications in both the cable and satellite contexts. However, we propose to retain the reference in the rule to the Grade B contour because that reference may still have relevance with respect to low power television (LPTV) stations.[63] We

[53] We note that this is similar to how we apply the fourth statutory factor (''whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community''). 47 U.S.C.534(h)(1)(C)(ii)(III). The Commission has found that this fourth factor (previously the third factor) is not intended to operate as a bar to a station's market modification request whenever other stations could also be shown to serve the communities at issue. *See e.g., Great Trails Broadcasting Corp.,* DA 95–1700, para. 23 (MB rel. Aug. 11, 1995); *Paxson San Jose License, Inc.,* DA 97–2276, para. 13 (MB rel. Oct. 30, 1997). Rather, the fourth factor is intended to enhance a station's market modification request where it could be shown that other stations do not provide news coverage of issues of concern to the communities at issue. *See id.* Likewise, we believe the new third statutory factor is intended to enhance a station's market modification request where it could be shown that such modification would promote consumer access to in-state programming.

[54] *See* 47 CFR 76.59(b)(1) through (6).

[55] *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules,* CS Docket No. 95–178, Order on Reconsideration and Second Report and Order, FCC 99–116, 64 FR 33788, para. 44, Jun. 24, 1999.

[56] 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

[57] *See* 47 CFR 76.59(b)(2).

[58] 47 CFR 76.59(b)(2).

[59] *See* 47 CFR 73.683(a).

[60] As set forth in section 73.622(e), a full-power station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level. See 47 CFR 73.622(e).

[61] *See STELA Significantly Viewed Report and Order,* at para. 51 (2010) (stating that the digital NLSC is ''the appropriate service contour relevant for a station's digital signal''); *2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09–182, Notice of Inquiry, FCC 10–92, 75 FR 33227, para. 103, June 11, 2010 (stating that the Commission developed the digital NLSC to approximate the same probability of service as the Grade B contour and has stated that the two are roughly equivalent); Report To Congress: The Satellite Home Viewer Extension And Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures; ET Docket No. 05–182, FCC 05–199, para. 111 (rel. Dec. 9, 2005). Since the DTV transition, the Media Bureau has used the digital NLSC in place of the analog Grade B contour in cable contexts in addition to market modifications. *See, e.g., KXAN, Inc.,* Memorandum Opinion and Order, DA 10–589, para. 8 n.32 (MB rel. Apr. 1, 2010) (using the NLSC in place of the Grade B contour for purposes of the cable network non-duplication and syndicated program exclusivity rules). Congress has also acted on the presumption that the two standards are roughly equivalent, by adopting parallel definitions for households that are ''unserved'' by analog (measured by Grade B) or digital (measured by NLSC) broadcasters in the STELA legislation enacted after the DTV transition. *See* 17 U.S.C. 119(d)(10)(A)(i).

[62] *See, e.g., Tennessee Broadcasting Partners,* Memorandum Opinion and Order, DA 10–824, para. 6, n.14 (MB rel. May 12, 2010) (stating, in a market modification order, that the Commission has treated a digital station's NLSC as the functional equivalent of an analog station's Grade B contour); *Lenfest Broadcasting, LLC,* Memorandum Opinion and Order, DA 04–1414, para. 7, n.27 (MB rel. May 20, 2004).

[63] We note that the Commission has tentatively concluded that it should extend the September 1, 2015 digital transition deadline for LPTV stations. *See Amendment of Parts 73 and 74 of the*

Continued

seek comment on these tentative conclusions. (We are also updating section 76.59(b)(6) of the rules to reflect the change from ''evidence of viewing patterns in *cable and noncable households* . . .'' to ''evidence of viewing patterns in *households that subscribe and do not subscribe to the services offered by multichannel video programming distributors*'' in the fifth statutory factor (*emphasis* added).[64] We seek comment on this tentative conclusion.)

15. Consistent with the cable carriage rule, we propose that satellite market modification requests that do not include the required evidence also be dismissed without prejudice and may be supplemented and re-filed at a later date with the appropriate filing fee.[65] In addition, consistent with the cable carriage rule, we propose that, during the pendency of a market modification petition before the Commission, satellite carriers will also be required to maintain the status quo with regard to signal carriage and must not delete from carriage the signal of an affected commercial television station.[66]

*C. Market Determinations*

16. Consistent with the cable carriage context, we interpret the statute to require that market modifications in the satellite carriage context must be limited to the specific station or stations identified in the market modification request and to the specific satellite community or communities referenced in the request.[67] This reading is based on the statute's language granting authority to modify markets ''with respect to a particular commercial television broadcast station.'' [68] This also makes sense because market modification determinations are highly fact-specific and turn on whether a particular commercial television broadcast station serves the needs of a specific community. We also propose to consider market modification requests separately in the cable and satellite contexts. We believe this proposal makes sense given the service area differences between satellite carriers and cable systems and the potential difference between a cable and satellite community, given that the former is defined as ''a separate and distinct community or municipal entity'' and we consider defining the latter using one or more five-digit zip codes.[69] We also propose that market modification requests will only apply to the satellite carrier or carriers named in the request.[70] For example, a modification may not always appropriately apply to both carriers because their spot beams may be different, even though they are serving the same market and thus one may have an infeasibility defense while the other may not. We seek comment on these proposals. We also seek comment on any alternative approaches. For example, should market determinations apply for purposes of both cable and satellite carriage and what procedures or definitional changes would be needed to implement such an approach? How would such an alternative approach account for the STELAR's exception for satellite carriage that would not be ''technically and economically feasible'' (discussed below)?

17. *Prior Determinations.* Because market modification determinations are so highly fact-specific, we tentatively conclude that prior market determinations made with respect to cable carriage will not automatically apply to the satellite context. It appears that the inherent differences between cable and satellite service would make such automatic application inadvisable. We note, however, that historic carriage is one of the five factors the Commission would consider in evaluating market modification requests and could carry weight in determining a market modification in the satellite context.[71] We seek comment on these tentative conclusions. We also seek comment on any alternative approaches. For example, should prior market determinations in the cable context carry a presumption of approval in the satellite context or automatically apply to the satellite context? We note, however, that any presumption or automatic application would have to be subject to the STELAR's exception for satellite carriers if the resulting carriage would not be ''technically and economically feasible.'' Would such alternative approaches impose a significant burden on satellite carriers who would have to evaluate the feasibility of carriage resulting from all prior determinations?

18. *Carriage after a market modification.* We tentatively conclude that television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to section 76.66 of the rules) by virtue of a change in the market definition (by operation of a market modification pursuant to section 76.59 of the rules) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. We further tentatively conclude that a satellite carrier must commence carriage within 90 days of receiving the request for carriage from the television broadcast station. These proposals are consistent with our cable rules, as well as with existing satellite carriage procedures, including those involving new television stations.[72] In addition, we tentatively conclude that the carriage election must be made in accordance with section 76.66(d)(1).[73] We seek comment on these tentative conclusions

*Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations,* MB Docket No. 03–185, Third Notice of Proposed Rulemaking, FCC 14–151, 79 FR 70824, para. 4, Nov. 28., 2014. Although LPTV stations are not entitled to mandatory satellite carriage, *see* 47 U.S.C. 338(a)(3), LPTV stations may be entitled to mandatory cable carriage, but only in limited circumstances. Both the Communications Act and the Commission's rules mandate that only a minimum number of qualified low power stations must be carried by cable systems, *see* 47 U.S.C. 534(c)(1); 47 CFR 76.56(b)(3), and, in order to qualify, such stations must meet several criteria. *See* 47 U.S.C. 534(h)(2)(A)–(F); 47 CFR 76.55(d)(1)–(6).

[64] *See* 47 U.S.C. 338(l)(2)(B)(v), 534(h)(1)(C)(ii)(V).

[65] *See* 47 CFR 76.59(c).

[66] *See* 47 CFR 76.59(d). *See also* 47 U.S.C. 338(l)(3)(B), 534(h)(1)(C)(iii); *Must Carry Order,* at para. 46.

[67] *See Must Carry Order,* at para. 47, n.139 (stating that ''the statute is intended to permit the modification of a station's market to reflect its individual situation''); 47 CFR 76.59. We note that this is also consistent with the Commission's previous determination that stations may make a different retransmission consent/mandatory carriage election in the satellite context than that made in the cable context. *See DBS Broadcast Carriage Report and Order,* at para. 23.

[68] 47 U.S.C. 338(l)(1).

[69] *See id.* at 1930, para. 24.

[70] This is also consistent with the satellite carriage election process. *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues,* CS Docket No. 00–96, Order on Reconsideration, FCC 01–249, 66 FR 49124, para. 62, Sept. 26., 2001 (*DBS Must Carry Reconsideration Order*) (''where there is more than one satellite carrier in a local market area, a television station can elect retransmission consent for one satellite carrier and elect must carry for another satellite carrier'').

[71] *See* 47 U.S.C. 338(l)(2)(B)(i)(I) (whether the station, or other stations located in the same area—''have been historically carried on the cable system or systems within such community'').

[72] *See* 47 CFR 76.64(f)(5), 76.66(d)(1) and (d)(3).

[73] *See* 47 CFR 76.66(d)(1). Section 76.66(d)(1) requires that an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested. 47 CFR 76.66(d)(1)(ii). The rule requires that a television station's written notification shall include the following information: (1) Station's call sign; (2) Name of the appropriate station contact person; (3) Station's address for purposes of receiving official correspondence; (4) Station's community of license; (5) Station's DMA assignment; and (6) Station's election of mandatory carriage or retransmission consent. 47 CFR 76.66(d)(1)(iii). The rule also requires that, within 30 days of receiving the request for carriage from the television broadcast station, a satellite carrier must notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station. 47 CFR 76.66(d)(1)(iv).

and on any other procedural requirements we should consider.

*D. Technical or Economic Infeasibility Exception for Satellite Carriers*

19. We propose to include the statutory language of section 338(l)(3) within section 76.59 to implement this provision, and we seek comment on this implementation. section 338(l)(3) provides that ''[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.'' [74] The legislative history indicates that Congress recognized ''that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.'' [75] The legislative history also indicates ''that claims of the existence of such difficulties should be well substantiated and carefully examined by the [Commission] as part of the petition consideration process.'' [76] Based on the language of the provision and the legislative history, we tentatively conclude that the satellite carrier has the burden to demonstrate technical or economic infeasibility. We further interpret the statutory text as requiring a satellite carrier to raise any technical or economic impediments in the market modification proceeding and we propose to address this issue in the market modification proceeding. This reading is consistent with the language of the statute (that we consider whether the carrier can accomplish carriage ''at the time of the determination''). Moreover, this will be most efficient for all parties. We seek comment on this proposal and whether the satellite carrier should be deemed to have waived technical or economic infeasibility arguments if not raised in response to the market modification request (and, thus, be prohibited from raising such a claim after a market determination, such as in response to a station's request for carriage). We also seek comment on any alternative approaches. In addition, we propose to grant a meritorious market modification request, even if such grant would not create a new carriage obligation at that time, for example, due to a finding of technical or economic infeasibility.[77] This would ensure that, if there is a change in circumstances such that it later becomes technically and economically feasible for the satellite carrier to carry the station, then the station could assert its carriage rights pursuant to the earlier market modification.[78] We seek comment on this proposal or if, alternatively, we should deny a market modification request that would not create a new carriage obligation at the time of the determination.

20. We also invite comment on the types of technical or economic impediments contemplated by this provision and the type of evidence needed to prove such infeasibility claims. Are there any objective criteria by which the Commission could determine technical or economic infeasibility? For example, the Commission has recognized that spot beam coverage limitations, in the provision of local-into-local service context, may be a legitimate technical impediment.[79] Under what circumstances would the limitations or coverage of a spot beam be a sufficient basis for a satellite carrier to prove that carriage of a station in the community at issue is not technically and economically feasible? Should we require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community? We also seek specific comment from satellite carriers on the complexities and expense that may be associated with reconfiguring a spot beam to cover additional communities added to the market served by the spot beam by operation of the market modification process. In addition, in the event of a Commission finding of technical or economic infeasibility, we seek comment on whether we should impose a reporting requirement on satellite carriers to notify the affected broadcaster if circumstances change at a later time making it technically and economically feasible for the carrier to carry the station. Would such changes in circumstances be sufficiently public so as to not necessitate the burden of such a reporting requirement? If not notified by the carrier, how else could a broadcaster find out about such a change in the feasibility of carriage? To the extent that a satellite carrier can provide the station at issue to some, but not all, subscribers in the community, should we allow or require the carrier to deliver the station to subscribers in the community who are capable of receiving the signal?

21. We note that compiling the standardized evidence necessary to demonstrate that a market modification should be granted may not be, in some instances, a simple or inexpensive process. In this regard, should the Commission, in the case of satellite market modifications, require or encourage stations seeking market modifications to contact a satellite carrier before filing a market modification request in order to get an initial determination on whether the carrier considers the request technically and economically feasible? Such an initial inquiry might save some broadcasters the time and expense of compiling the standardized evidence for a modification that is not technically and economically feasible by alerting them to the technical or economic issue, which they could then take into account in deciding whether to file the request. We seek comment on this issue.

*E. No Effect on Eligibility To Receive Distant Signals via Satellite*

22. We propose to include the statutory language of section 338(l)(5) within section 76.59 to implement this provision, and we seek comment on any further guidance we can give for its implementation.[80] Section 338(l)(5) provides that ''[n]o modification of a commercial television broadcast station's local market pursuant to this subsection shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339, notwithstanding subsection (h)(1) of this section.'' [81] There are two key restrictions on a satellite subscriber's eligibility to receive ''distant'' (out-of-market) signals.[82] First, subscribers are generally eligible to receive a distant station from a satellite carrier only if the subscriber is ''unserved'' over the air by

[74] 47 U.S.C. 338(l)(3).

[75] Senate Commerce Committee Report at 11.

[76] See id.

[77] We note that this is consistent with the cable carriage context, in which the Commission might grant a market modification, even if such grant would not result in a new carriage obligation at that time, for example, due to the station being a duplicating signal. *See* 47 CFR 76.56(b)(5).

[78] This concept is similar to the duplicating signals situation, in which a satellite carrier must add a television station to its channel line-up if such station no longer duplicates the programming of another local television station. *See* 47 CFR 76.66(h)(4).

[79] *See DBS Broadcast Carriage Report and Order,* at para. 42 (allowing satellite carriers to use spot beam technology to provide local-into-local service, even if the spot beam did not cover the entire market).

[80] 47 U.S.C. 338(l)(5).

[81] *Id.*

[82] *See* 17 U.S.C. 119; 47 U.S.C. 339. Generally, a station is considered ''distant'' with respect to a subscriber if such station originates from outside of the subscriber's local television market (or DMA). *See id.*

a local station of the same network.[83] Second, even if ''unserved,'' a subscriber is not eligible to receive a distant station from a satellite carrier if the carrier is making ''available'' to such subscriber a local station of the same network.[84] We believe section 338(l)(5) is largely intended as an exception to these two subscriber eligibility requirements. In other words, under this reading, the addition of a new local station to a local television market by operation of a market modification (which might otherwise restrict a subscriber's eligibility to receive a distant station) would not disqualify an otherwise eligible satellite subscriber from receiving a distant station of the same network. For example, a subscriber may be receiving a distant station because the subscriber resides in a ''short market,'' [85] has obtained a waiver from the relevant network station,[86] or is otherwise eligible to receive distant signals pursuant to section 339. That subscriber will continue to be eligible to receive the distant station after a market modification that adds a new local station of the same network. We seek comment on our proposed reading of this provision. We also seek comment on any alternative interpretations. We invite comment on the specific situations intended to be covered by section 338(l)(5). We seek comment on whether section 338(l)(5) also means that the deletion of a local station from a local television market by operation of a market modification would not make otherwise ineligible subscribers now eligible to receive a distant station of the same network. We also seek comment on any other rule changes necessary to implement this statutory provision.

*F. Definition of Community*

23. As directed by the STELAR, we consider how to define a ''community'' for purposes of market modification in both the cable and satellite contexts.[87] With respect to a ''satellite community,'' we generally invite comment on how to define a ''satellite community,'' and seek specific comment on two alternate proposals for this definition below. With respect to a ''cable community,'' we tentatively conclude that our existing definition of a ''cable community'' (in section 76.5(dd) of the rules) has worked well in cable market modifications for more than 20 years and should not be changed. While we continue to believe the cable definition best effectuates the cable market modification provision, we nevertheless invite comment on whether we need to update this definition, such as whether to allow cable modifications on a county basis. Section 102(d)(2) of the STELAR requires the Commission to ''update what it considers to be a community for purposes of a modification of a market'' in both the satellite and cable contexts.[88] The legislative history indicates Congress' intent for the Commission ''to consider alternative definitions for community that could make the market modification process more effective and useful.'' [89]

24. The concept of a ''community'' is important in the market modification context, because the term describes the geographic area that will be added to or deleted from a station's local television market, which in turn determines the stations that must be carried by a cable operator (or, in the future, a satellite carrier) to subscribers in that community.[90] Because of the localized nature of cable systems, cable communities are easily defined by the geographic boundaries of a given cable system, which are often, but not always, coincident with a municipal boundary and may vary as determined on a case-by-case basis.[91] In the cable carriage context, the Commission considers market modification requests on a community-by-community basis [92] and defines a community unit in terms of a ''distinct community or municipal entity'' where a cable system operates or will operate.[93] A ''satellite community,'' however, is not as easily defined as a cable community. Unlike cable service, which reaches subscribers in a defined local area via local franchises, satellite carriers offer service on a national basis, with no connection to a particular local community or municipality. Moreover, satellite service is sometimes offered in areas of the country that do not have cable service, and thus cannot be defined by cable communities. The Commission previously faced the question of how to define a satellite community in 2005, after the SHVERA added significantly viewed provisions for the satellite carriage context.[94] In the significantly viewed context, the Commission, seeking regulatory parity, defined a satellite community in the same way as a cable community in most situations.[95] However, the Commission

[83] The Copyright Act defines an ''unserved household,'' with respect to a particular television network, as ''a household that cannot receive, through the use of an antenna, an over-the-air signal containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household's local market and affiliated with that network—(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or (ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time. 17 U.S.C. 119(d)(10)(A). An unserved household can also be one that is subject to one of four statutory waivers or exemptions. *See id.* 119(d)(10)(B) through (E).

[84] *See* 47 U.S.C. 339(a)(2); 17 U.S.C. 119(a)(3). This second restriction on eligibility is commonly referred to as the ''no distant where local'' rule. A satellite carrier makes ''available'' a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person. 47 U.S.C. 339(a)(2)(H). *See also* 17 U.S.C. 119(a)(3)(F).

[85] *See* 47 U.S.C. 339(a)(2)(C); 17 U.S.C. 119(d)(10). By a ''short market,'' we refer to a market in which one of the four major television networks is not offered on the primary stream of a local broadcast station, thus permitting satellite carriers to deliver a distant station affiliated with that missing network to subscribers in that market.

[86] *See* 47 U.S.C. 339(a)(2)(E).

[87] STELAR sec. 102(d)(2); 47 U.S.C.A. 338 Note.

[88] STELAR sec. 102(d)(2) (''MATTERS FOR CONSIDERATION.—As part of the rulemaking required by paragraph (1), the Commission shall . . . update what it considers to be a community for purposes of a modification of a market under section 338(l) or 614(h)(1)(C) of the Communications Act of 1934''); 47 U.S.C.A. 338 Note.

[89] *Senate Commerce Committee Report* at 12.

[90] *See* 47 U.S.C. 338(a)(1); 47 CFR 76.66(b)(1).

[91] *See Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems*, Docket No. 20561, First Report and Order, FCC 77–205, para. 20, n. 5 (rel. Apr. 6, 1977) (*1977 Cable Order*).

[92] *See 1977 Cable Order,* para. 22 (explaining that the cable carriage rules apply ''on a community-by-community basis''). *See also* 47 CFR 76.5(dd), 76.59.

[93] 47 CFR 76.5(dd) defines ''community unit'' as: ''A cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).'' A cable system community is assigned a community unit identifier number (''CUID'') when registered with the Commission, pursuant to section 76.1801 of the rules. 47 CFR 76.1801.

[94] *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, MB Docket No. 05–49, Report and Order, FCC 05–187, 70 FR 76504, para. 51, December 27, 2005 (*SHVERA Significantly Viewed Report and Order*). The SHVERA defined the term ''community'' for purposes of the significantly viewed rules, as either ''(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or (B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.'' 47 U.S.C. 340(i)(3).

[95] *See* 47 CFR 76.5(gg) (defining a ''satellite community'' as ''[a] separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of any such unincorporated community may be defined by one or more adjacent five-digit zip code areas. Satellite communities apply only in areas in which there is

allowed a satellite carrier to define a satellite community ''by one or more adjacent five-digit zip code areas'' in the limited situation in which there was no previously defined cable community and the area was unincorporated.[96]

25. We seek comment on whether we should use the definition of ''satellite community'' in section 76.5(gg) for satellite market modifications.[97] Alternatively, we seek comment on whether we should use one or more adjacent five-digit zip codes to form the basis of a ''satellite community'' for satellite market modifications.[98] Would allowing satellite carriers to use one or more adjacent five-digit zip code areas (notwithstanding the presence of a cable community) in the market modification context better effectuate the STELAR's goal to promote consumer access to relevant television programming? What other possible definitions of satellite community should we consider? Would another definition be more technically and economically feasible for satellite carriers to apply and, thus, facilitate successful market modifications? [99] For example, it might not be technically and economically feasible for a satellite carrier to retransmit a station to an entire cable community (as defined in 76.5(dd)), but it might be feasible for the carrier to retransmit the station to particular portions of that community, such as to certain zip codes within such community. What definition of community will most effectively promote consumer access to in-state programming? [100] For example, is it appropriate to consider county-based modifications in the satellite context, particularly in situations in which the county is assigned to an out-of-state DMA? [101] If we allow modifications on a county basis in the satellite context, should we also allow such modifications in the cable context?

## IV. Procedural Matters

### *A. Initial Regulatory Flexibility Act Analysis*

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[102] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (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 for comments provided on the first page of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[103] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[104]

#### 1. Need for, and Objectives of, the Proposed Rule Changes

27. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes satellite television ''market modification'' rules to implement section 102 of the STELAR.[105] The STELAR amended the Communications Act and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights.[106] The Commission currently has the authority to modify markets only in the cable carriage context.[107] With section 102 of the STELAR, Congress provides regulatory parity in this regard in order ''to further consumer access to relevant television programming.'' [108] In this NPRM, consistent with Congress' intent that the Commission model the satellite market modification process on the current cable market modification process, the Commission proposes to implement section 102 of the STELAR by revising the current cable market modification rule, section 76.59, to apply also to satellite carriage, while adding provisions to the rules to address the unique nature of satellite television service.[109] In addition to establishing rules for satellite market modifications, section 102 of the STELAR directs the Commission to consider whether it should make changes to the current cable market modification rules,[110] and it also makes certain conforming amendments to the cable market modification statutory provision.[111] Accordingly, as part of the implementation of the STELAR, the Commission proposes to make conforming changes to the cable market modification rules and considers whether it should make any other changes to the current cable market modification rules. The STELAR requires the Commission to issue final rules in this proceeding on or before September 4, 2015.[112]

#### 2. Legal Basis

28. The proposed action is authorized pursuant to section 102 of the STELA Reauthorization Act of 2014 (STELAR), Pub. L. 113–200, 128 Stat. 2059 (2014), and sections 1, 4(i), 303(r), 338 and 614 of the Communications Act of 1934, as

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no pre-existing cable community, as defined in 76.5(dd).''). *See also SHVERA Significantly Viewed Report and Order,* at para. 50. We note, however, that the SHVERA required satellite carriers to use the existing defined cable communities on the significantly viewed list. *See* 47 U.S.C. 340(a)(1); 340(i)(3)(A). This provision, in part, caused the Commission to favor the use of cable communities to define future communities, except for unincorporated areas, to promote consistent rules and significantly viewed listings for both satellite and cable. *See SHVERA Significantly Viewed Report and Order,* at para. 51 (stating that the ''definition will also make it more likely that a cable system subsequently built in such an area would serve a 'community' similar to the satellite community, thus making the [Significantly Viewed] List more easily used by both cable and satellite providers''). This reasoning does not necessarily apply to the market modification context if we adopt our proposal to separately consider and apply market modifications in the cable and satellite contexts.

[96] 47 CFR 76.5(gg). The Commission required satellite carriers to use zip codes that were adjacent to each other ''to prevent carriers from cherry-picking their service to these areas.'' *SHVERA Significantly Viewed Report and Order,* at para. 52.

[97] *See* 47 CFR 76.5(gg).

[98] We note that the Commission used zip codes in lieu of community units to define the various zones of protection afforded under the satellite exclusivity rules applicable to nationally distributed superstations. *See* 47 CFR 76.122, 76.123; *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals,* CS Docket No. 00–2, Report and Order, FCC 00–388, 65 FR 68082, para. 28, Nov. 14, 2000, recon. granted in part, denied in part, Order on Reconsideration, FCC 02–287, 67 FR 68944, Nov. 14, 2002.

[99] We note that the two satellite carriers previously favored the use of zip codes in the significantly viewed context to offer ''greater certainty to consumers.'' *See SHVERA Significantly Viewed Report and Order,* at para. 52.

[100] We take particular note here of Congress' concern that consumers in an out-of-state DMA may ''lack access to local television programming that is relevant to their everyday lives.'' *Senate Commerce Committee Report* at 11.

[101] *See In-State Programming Report,* at para. 58.

[102] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

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

[104] *See id.*

[105] The STELA Reauthorization Act of 2014 (STELAR), sec. 102, Public Law 113–200, 128 Stat. 2059, 2060–62 (2014) (codified at 47 U.S.C. 338(l)). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.).

[106] STELAR secs. 102, 204, 128 Stat. at 2060–62, 2067.

[107] *See* 47 U.S.C. 534(h)(1)(C). *See also* 47 CFR 76.59.

[108] *See* title of STELAR sec. 102, ''Modification of Television Markets to Further Consumer Access to Relevant Television Programming.'' *See also* Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113–322 (2014) (''*Senate Commerce Committee Report*'').

[109] *See* 47 CFR 76.59. The Commission proposes to revise section 76.59 of the rules to apply to both cable systems and satellite carriers.

[110] STELAR sec. 102(d).

[111] *See* STELAR sec. 102(b) (amending 47 U.S.C. 534(h)(1)(C)(ii)).

[112] STELAR sec. 102(d)(1).

amended, 47 U.S.C. 151, 154(i), 303(r), 338 and 534.

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

29. 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.[113] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [114] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[115] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[116] The rule changes proposed herein will directly affect small television broadcast stations and small MVPD systems, which include cable system operators and satellite carriers. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

30. *Wired Telecommunications Carriers.* The North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [117] The SBA has developed a small business size standard for wireline firms for the broad economic census category of ''Wired Telecommunications Carriers.'' Under this category, a wireline business is small if it has 1,500 or fewer employees.[118] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[119] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[120] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

31. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above.[121] The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.[122] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[123] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[124] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

32. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[125] According to SNL Kagan, there are 1,258 cable operators.[126] Of this total, all but 10 incumbent cable companies are small under this size standard.[127] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[128] Current Commission records show 4,584 cable systems nationwide.[129] Of this total, 4,012 cable systems have fewer than 20,000 subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

33. *Cable System Operators* (Telecom Act Standard). The Communications

[113] 5 U.S.C. 603(b)(3).

[114] 5 U.S.C. 601(6).

[115] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[116] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[117] U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* Examples of this category are: broadband Internet service providers (*e.g.,* cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (''CCTV'') services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (''DTH'') services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (''MMDS'').

[118] 13 CFR 121.201; NAICS code 517110.

[119] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[120] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[121] *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[122] 13 CFR 121.201; NAICS code 517110.

[123] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[124] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[125] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* MM Docket No. 92–266, MM Docket No. 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95–196, 60 FR 35854, July 12, 1995.

[126] Data provided by SNL Kagan to Commission Staff upon request on March 25, 2014. Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming,* MB Docket No. 12–203, Fifteenth Report, FCC 13–99, at para. 24 (rel. July 22, 2013) (*15th Annual Competition Report*).

[127] SNL Kagan, U.S. Multichannel Top Cable MSOs, *http://www.snl.com/interactivex/TopCableMSOs.aspx* (visited June 26, 2014). We note that when this size standard (*i.e.,* 400,000 or fewer subscribers) is applied to all MVPD operators, all but 14 MVPD operators would be considered small. *15th Annual Competition Report,* at paras. 27–28 (subscriber data for DBS and Telephone MVPDs). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act,* MB Docket No. 11–93, Report and Order, FCC 11–182, 77 FR 40276, July 9, 2012 (*CALM Act Report and Order*) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

[128] 47 CFR 76.901(c).

[129] The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on July 1, 2014. A cable system is a physical system integrated to a principal headend.

Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [130] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[131] Based on available data, we find that all but 10 incumbent cable operators are small under this size standard.[132] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[133] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

34. *Satellite Carriers.* The term ''satellite carrier'' means an entity that uses the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in the Direct Broadcast Satellite (DBS) service or Fixed-Satellite Service (FSS) frequencies.[134] As a general practice (not mandated by any regulation), DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.[135] The Commission has concluded that the definition of ''satellite carrier'' includes all three of these types of entities.[136]

35. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers,[137] which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[138] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[139] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[140] Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled ''Cable and Other Program Distribution.'' The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[141] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.[142] Each currently offers subscription services. DIRECTV and DISH Network each reports annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

36. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,[143] which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[144] Census data for 2007 shows that there were 3,188 firms

[130] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[131] 47 CFR 76.901(f); *see* Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01–158 (Cable Services Bureau, Jan. 24, 2001) (establishing the threshold for determining whether a cable operator meets the definition of small cable operator at 677,000 subscribers and stating that this threshold will remain in effect for purposes of section 76.901(f) until the Commission issues a superseding public notice). We note that current industry data indicates that there are approximately 54 million incumbent cable video subscribers in the United States today and that this updated number may be considered in developing size standards in a context different than section 76.901(f). NCTA, Industry Data, Cable's Customer Base (June 2014), *https://www.ncta.com/industry-data* (visited June 25, 2014).

[132] *See* SNL Kagan, U.S. Multichannel Top Cable MSOs, *http://www.snl.com/interactivex/TopCableMSOs.aspx* (visited June 26, 2014).

[133] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[134] The Communications Act defines the term ''satellite carrier'' by reference to the definition in the copyright laws in title 17. *See* 47 U.S.C. 340(i)(1) and 338(k)(3); 17 U.S.C.119(d)(6). Part 100 of the Commission's rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed under Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service,* FCC 02–110, 67 FR 51110, August 7, 2002; 47 CFR 25.148.

[135] See, *e.g., Application Of DIRECTV Enterprises, LLC, Request For Special Temporary Authority for the DIRECTV 5 Satellite; Application Of DIRECTV Enterprises, LLC, Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DIRECTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location,* Order and Authorization, DA 04–2526 (Sat. Div. rel. Aug. 13, 2004).

[136] *SHVERA Significantly Viewed Report and Order,* at paras. 59–60.

[137] This category of Wired Telecommunications Carriers is defined above (''By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''). U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[138] 13 CFR 121.201; NAICS code 517110.

[139] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[140] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[141] 13 CFR 121.201; NAICS code 517510 (2002).

[142] S*ee 15th Annual Competition Report,* at para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at paras. 27, 110–11.

[143] This category of Wired Telecommunications Carriers is defined above (''By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''). U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[144] 13 CFR 121.201; NAICS code 517110.

that operated for the entire year.[145] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[146] Therefore, under this size standard, the majority of such businesses can be considered small.

37. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.[147] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[148] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[149] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[150] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

38. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[151] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[152] OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.[153] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[154] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[155] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[156] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[157] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[158] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

39. *Wireless cable systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) [159] and Educational Broadband Service (EBS) [160] to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[161] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[162] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[163] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder

[145] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[146] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[147] This category of Wired Telecommunications Carriers is defined above (''By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''). U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[148] 13 CFR 121.201; NAICS code 517110.

[149] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[150] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[151] 47 U.S.C. 571(a)(3) through (4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 06–189, Thirteenth Annual Report, FCC 07–206, 74 FR 11102, para. 135, March 16, 2009 (*Thirteenth Annual Cable Competition Report*).

[152] *See* 47 U.S.C. 573.

[153] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[154] 13 CFR 121.201; NAICS code 517110.

[155] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[156] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[157] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[158] *See Thirteenth Annual Cable Competition Report,* at para. 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[159] BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). *See Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131, PP Docket No. 93–253, Report and Order, FCC 95–230, 60 FR 36524, para. 7, Jul. 17, 1995.

[160] EBS was previously referred to as the Instructional Television Fixed Service (ITFS). *See id.*

[161] 47 CFR 21.961(b)(1).

[162] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

[163] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* AU Docket No. 09–56, Public Notice, DA 09–1376 (WTB rel. Jun. 26, 2009).

with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[164] Auction 86 concluded in 2009 with the sale of 61 licenses.[165] Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

40. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers,[166] which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[167] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[168] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[169] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.[170] The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.[171]

41. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.[172] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[173] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[174] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[175] Therefore, under this size standard, the majority of such businesses can be considered small.

42. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [176] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[177] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

43. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers.[178] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[179] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[180] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[181] Therefore, under this size standard, the majority of such businesses can be considered small.

44. *Television Broadcasting.* This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' [182] The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts.[183] The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000.[184] Because the Census has

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[164] *Id.* at 8296.

[165] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, DA 09–2378 (WTB rel. Nov. 6, 2009.

[166] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[167] 13 CFR 121.201; NAICS code 517110.

[168] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[169] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[170] *http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp.*

[171] The term ''small entity'' within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of fewer than 50,000). 5 U.S.C. 601(4) through (6).

[172] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[173] 13 CFR 121.201; NAICS code 517110.

[174] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[175] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[176] 15 U.S.C. 632.

[177] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[178] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[179] 13 CFR 121.201; NAICS code 517110.

[180] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[181] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[182] U.S. Census Bureau, 2012 NAICS Definitions, ''515120 Television Broadcasting,'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.''

[183] 13 CFR 121.201; 2012 NAICS code 515120.

[184] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United*

Continued

no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

45. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,390 stations.[185] Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.[186] NCE stations are non-profit, and therefore considered to be small entities.[187] Therefore, we estimate that the majority of television broadcast stations are small entities.

46. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [188] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

47. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations and low power television (LPTV) stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: those having $38.5 million or less in annual receipts.[189] The Commission has estimated the number of licensed Class A television stations to be 431.[190] The Commission has also estimated the number of licensed LPTV stations to be 2,003.[191] Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

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

48. The NPRM proposes to revise section 76.59 of the rules to apply it to the satellite television context, thus permitting commercial TV broadcast stations and satellite carriers to file petitions seeking to modify a commercial TV broadcast station's local television market for purposes of satellite carriage rights. Under section 76.59 of the rules, commercial TV broadcast stations and cable system operators may already file such requests for market modification for purposes of cable carriage rights. Consistent with the current cable requirement in section 76.59, the proposed rules would require commercial TV broadcast stations and satellite carriers to file market modification requests and/or responsive pleadings in accordance with the procedures for filing Special Relief petitions in section 76.7 of the rules.[192] Consistent with the current cable requirement in section 76.59, the proposed rules would require commercial TV broadcast stations and satellite carriers to provide specific forms of evidence to support market modification petitions, should they chose to file such petitions. The proposed rules would also require a satellite carrier to provide specific evidence to demonstrate its claim that satellite carriage resulting from a market modification would be technically or economically infeasible. The NPRM does not otherwise propose any new reporting, recordkeeping or other compliance requirements.

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

49. The RFA requires an agency to describe any significant 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 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.[193]

50. Consistent with the statute's goal of promoting regulatory parity between cable and satellite service, the NPRM proposes to apply the existing cable market modification rule to the satellite context. The proposed rules would not change the market modification process currently applicable to small television stations and small cable systems, although the proposed rules would for the first time allow stations to request market modifications for purposes of satellite carriage. Small TV stations that choose to file satellite market modification petitions must comply with the associated filing and evidentiary requirements; however, the filing of such petitions is voluntary. In addition, small TV stations may want to respond to a petition to modify its market (or the market of a competitor station) filed by a satellite carrier or a competitor station; however, there are no standardized evidentiary requirements associated with such responsive pleadings. Through a market modification process, a small TV station may gain or lose carriage rights with respect to a particular community, based on the five statutory factors, to better reflect localism.[194] We do not

*States: 2007* (515120), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.*

[185] *See Broadcast Station Totals as of December 31, 2014*, Press Release (MB rel. Jan. 7, 2015) (*Broadcast Station Totals*) at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-331381A1.pdf.*

[186] *See Broadcast Station Totals, supra.*

[187] *See generally* 5 U.S.C. 601(4), (6).

[188] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[189] 13 CFR 121.201; NAICS code 515120.

[190] S*ee Broadcast Station Totals, supra.*

[191] *See Broadcast Station Totals, supra.*

[192] Broadcasters and satellite carriers that want to oppose market modification requests would need to file responsive pleadings in accordance with 47 CFR 76.7.

[193] 5 U.S.C. 603(c)(1) through (c)(4).

[194] Section 338(l) of the Act provides that, in deciding requests for market modifications, the Commission must afford particular attention to the value of localism by taking into account the following five factors: (1) Whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community; (2) whether the television station provides coverage or other local service to such community; (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence; (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of

have data to measure whether small TV stations on the whole are more or less likely to benefit from market modifications, so we invite small TV stations to comment on this issue. In addition, we invite comment on whether there are any alternatives we should consider to the Commission's proposed implementation of section 102 of the STELAR that would minimize any adverse impact on small TV stations, but which are consistent with the statute and its goals, such as promoting localism and regulatory parity.

51. The proposed rules, for the first time, would allow satellite carriers to request market modifications. As previously discussed, only two entities—DIRECTV and DISH Network—provide direct broadcast satellite (DBS) service, which requires a great investment of capital for operation. As noted in section C of this IRFA, neither one of these two entities qualify as a small entity and small businesses do not generally have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services.[195]

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

52. None.

*B. Initial Paperwork Reduction Act of 1995 Analysis*

53. This document contains proposed information collection requirements.[196] The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA).[197]

54. Public and agency comments are due June 12, 2015. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.[198] In addition, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.[199]

55. To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

*OMB Control Number:* 3060–0546.

*Title:* Section 76.59, Market Modification of Broadcast Television Stations for Purposes of the Cable and Satellite Mandatory Television Broadcast Signal Carriage Rules.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 80 respondents and 100 responses.

*Estimated Time Per Response:* 4 to 40 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in section 102 of the STELA Reauthorization Act of 2014 (STELAR), Public Law 113–200, 128 Stat. 2059 (2014), and sections 1, 4(i), 303(r), 338 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 338 and 534.

*Total Annual Burden:* 976 hours.

*Total Annual Costs:* $1,277,300.

*Nature and Extent of Confidentiality:* There is no assurance of confidentiality provided to respondents.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On March 26, 2015, the Commission released a Notice of Proposed Rulemaking (NPRM), FCC 15–34, in MB Docket No. 15–71, proposing satellite television market modification rules to implement section 102 of the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELAR). To implement section 102 of the STELAR, the NPRM proposes to revise 47 CFR 76.59 of the rules to apply it to the satellite television context, thus permitting commercial TV broadcast stations and satellite carriers to file petitions seeking to modify a commercial TV broadcast station's local television market for purposes of satellite carriage rights. Under 47 CFR 76.59 of the rules, commercial TV broadcast stations and cable system operators may already file such requests for market modification for purposes of cable carriage rights.

*C. Ex Parte Rules*

56. The proceeding this Notice of Proposed Rulemaking initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[200] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. 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. Memoranda must contain

concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community. 47 U.S.C. 338(l)(2)(B)(i) through (v).

[195] *See* IRFA para. 10.

[196] *See* OMB Control Number 3060–0546.

[197] The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[198] *See* 44 U.S.C. 3506(c)(2).

[199] The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

[200] *See* 47 CFR 1.1206 (Permit-but-disclose proceedings); *see also id.* §§ 1.1200 *et seq.*

a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 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 section 1.1206(b) of the rules. In proceedings governed by section 1.49(f) of the rules 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.

*D. Filing Requirements*

57. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[201] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[202]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

58. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

59. *Availability of Documents.* Comments and reply comments will be publically available online via ECFS.[203] These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

60. For additional information, contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7142. Direct press inquiries to Janice Wise at (202) 418–8165.

## V. Ordering Clauses

61. Accordingly, *it is ordered* that, pursuant to section 102 of the STELA Reauthorization Act of 2014 (STELAR), Public Law 113–200, 128 Stat. 2059 (2014), and sections 1, 4(i), 303(r), 338 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 338 and 534, this Notice of Proposed Rulemaking *is adopted* and *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

62. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 76**

Cable television, Satellite television, Broadcast television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for Part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.7 is amended by revising paragraph (a)(3) to read as follows:

**§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.**

(a) * * *

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, multichannel video programming distributor, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

* * * * *

3. Section 76.59 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(5), (b)(6), and (d) and by adding new paragraphs (e) and (f) to read as follows:

**§ 76.59 Modification of television markets.**

(a) The Commission, following a written request from a broadcast station, cable system or satellite carrier, may deem that the television market, as defined either by § 76.55(e) or § 76.66(e), of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's

[201] *See* 47 CFR 1.415, 1419.

[202] *See Electronic Filing of Documents in Rulemaking Proceedings,* GC Docket No. 97–113, Report and Order, 63 FR 24121, May 1, 1998.

[203] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

television market. In this respect, communities may be considered part of more than one television market.

(b) * * *

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Noise-limited service contour maps (for digital stations) or Grade B contour maps (for analog stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

* * * * *

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.,* the reported audience averaged over Sunday-Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

* * * * *

(d) A cable operator or satellite carrier shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.

(e) A market determination under this section shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.

(f) No modification of a commercial television broadcast station's local market pursuant to this section shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals from a satellite carrier pursuant to 47 U.S.C. 339.

■ 4. Section 76.66 is amended by adding a new paragraph (d)(6) and revising paragraph (e)(1) introductory text to read as follows:

**§ 76.66 Satellite broadcast signal carriage.**

* * * * *

(d) * * *

(6) *Carriage after a market modification.* Television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to § 76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television broadcast station. The election must be made in accordance with the requirements in paragraph (d)(1) of this section.

* * * * *

(e) *Market definitions.* (1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, unless such market is amended pursuant to § 76.59, and

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Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2015–08435 Filed 4–10–15; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 300, 600, 660, and 665

**[Docket No. 070516126–5292–03]**

**RIN 0648–AV12**

### International Affairs; High Seas Fishing Compliance Act; Permitting and Monitoring of U.S. High Seas Fishing Vessels

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulatory changes to improve the administration of the High Seas Fishing Compliance Act program and the monitoring of U.S. fishing vessels operating on the high seas. The proposed rule includes, for all U.S. fishing vessels operating on the high seas, adjustments to permitting and reporting procedures. It also includes requirements for the installation and operation of enhanced mobile transceiver units for vessel monitoring, carrying observers on vessels, reporting of transshipments taking place on the high seas, and protection of vulnerable marine ecosystems. This proposed rule has been prepared to minimize duplication and to be consistent with other established requirements.

**DATES:** Written comments must be received by May 13, 2015.

**ADDRESSES:** Written comments on this action, identified by NOAA–NMFS–2015–0052, may be submitted by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0052*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Mail: Mark Wildman, Trade and Marine Stewardship Division, Office for International Affairs and Seafood Inspection, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments must be submitted by one of the above methods to ensure that the comments 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 (such as name or address) 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).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Mark Wildman, NMFS, Office for International Affairs and Seafood Inspection (see address above) and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Mark Wildman, Trade and Marine Stewardship Division, Office for International Affairs and Seafood Inspection, NMFS (phone 301–427–8386 or email *mark.wildman@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

## Background

The purposes of the High Seas Fishing Compliance Act (HSFCA; 16 U.S.C. 5501 *et seq.*) are (1) to implement the Food and Agriculture Organization of the United Nations (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement) and (2) to establish a system of permitting, reporting and regulation for vessels of the United States fishing on the high seas. 16 U.S.C. 5501. ''High seas'' is defined in the HSFCA and its implementing regulations as waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States. 16 U.S.C. 5502 (3); 50 CFR 300.11.

The HSFCA authorizes a system of permitting U.S. fishing vessels that operate on the high seas to satisfy the obligation of Parties to the Compliance Agreement (Parties) to require that fishing vessels flying their flags obtain specific authorization to operate on the high seas. The HSFCA requires the Secretary of Commerce (Secretary) to establish conditions and restrictions on each permit issued under HSFCA as necessary and appropriate to carry out the obligations of the United States under the Compliance Agreement. 16 U.S.C. 5503 (d). At a minimum, such conditions and restrictions must include the marking of the permitted vessel in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, and reporting of fishing activities. Parties are also responsible for ensuring that their authorized vessels do not undermine conservation and management measures, including those adopted by international fisheries management organizations, or by treaties or other international agreements. Accordingly, the HSFCA prohibits the use of fishing vessels on the high seas in contravention of international conservation and management measures recognized by the United States. 16 U.S.C. 5505 (1). A list of the international conservation and management measures recognized by the United States is published by NMFS in the **Federal Register** from time to time in consultation with the Secretary of State, as required by section 5504(e) of the HSFCA. The last such notice was published on May 19, 2011 (76 FR 28954). NMFS reinforces this prohibition by requiring a high seas fishing permit for any vessel operating on the high seas and, in that permit, authorizing only those activities that would not undermine international conservation and management measures recognized by the United States. The HSFCA also gives NMFS discretion to impose permit terms and requirements pursuant to other applicable law, such as the Endangered Species Act, the Marine Mammal Protection Act, in addition to international conservation and management measures recognized by the United States. *See Turtle Island Restoration Network* v. *National Marine Fisheries Service,* 340 F.3d 969 (9th Cir. 2003).

Finally, the HSFCA authorizes NMFS to promulgate regulations ''as may be necessary to carry out the purposes of the Agreement and [the Act],'' including its permitting authorities. In promulgating such regulations, NMFS shall ensure that ''[t]o the extent practicable, such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act,'' 16 U.S.C. 1801 *et seq.,* which provides broad authority to establish measures for the conservation and management of fisheries, *id.* 1853(b)(14).

Regulations implementing the HSFCA were first promulgated in 1996 (61 FR 11751, March 22, 1996). The initial regulations included application and issuance procedures for high seas fishing permits. Subsequent regulations promulgated in 1999 (64 FR 13, January 4, 1999) specified how high seas fishing vessels must be marked for identification purposes and required reporting by vessel owners and operators of catch and fishing effort when fishing on the high seas.

An objective of this rulemaking is to codify NMFS' procedures for review of its high seas fishing authorizations under environmental laws, particularly the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA). Another objective of this proposed rule is to improve the monitoring of U.S. fishing vessels operating on the high seas. Improving such monitoring would enhance the U.S. government's ability to ensure compliance with international conservation and management measures with respect to U.S. fishing vessels operating on the high seas. Furthermore, this proposed rule adds a section describing how NMFS will, through high seas permit conditions, address impacts to vulnerable marine ecosystems from bottom fishing consistent with international conservation and management measures recognized by the United States.

NMFS is proposing substantive changes to the HSFCA regulations at 50 CFR part 300, subpart B, and also redesignation of the regulations as Subpart Q. Table 1 shows how the sections currently in Subpart B would be redesignated in Subpart Q. The substance of the following sections would not be changed: § 300.10 (redesignated to 300.330) and § 300.13(a) (redesignated to 300.333(a)). Other sections are new or would be modified per this rulemaking, as explained below.

TABLE 1—REDESIGNATION OF SECTIONS IN 50 CFR PART 300, SUBPART B TO SUBPART Q

| Proposed subpart Q sections | Current subpart B sections |
|---|---|
| 300.330 Purpose | 300.10. |
| 300.331 Definitions | 300.11. |
| 300.332 Issuing offices | 300.12. |
| 300.333 Vessel permits | 300.13. |
| 300.334 Fisheries authorized on the high seas | New section. |
| 300.335 Bottom fishing | New section. |
| 300.336 Vessel identification | 300.14. |
| 300.337 Requirements for Enhanced Mobile Transceiver Units | New section. |
| 300.338 Observers | New section. |
| 300.339 Transshipment on the high seas | New section. |
| 300.340 Prohibitions | 300.15. |
| 300.341 Reporting | 300.17. |

**Coordination With Other Laws**

U.S. vessels fishing on the high seas are subject to the requirements of multiple U.S. regulations and laws, depending on the geographic area of the fishing activity, gear used, target fish species, and other factors. Such vessels can be subject to regulations that implement fishery management plans (FMPs) adopted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and laws and regulations implementing international fisheries agreements. Section 105 of the HSFCA specifies that regulations should minimize duplication of license application and reporting requirements contained in other regulations applicable to U.S. vessels used for fishing on the high seas and, to the extent practicable, such regulations must be consistent with regulations implementing FMPs under the Magnuson-Stevens Act. 16 U.S.C. 5504 (d). Recognizing that the HSFCA requirements can overlap with other requirements, this proposed rule has been prepared to minimize duplication and to be consistent with other applicable requirements.

In addition to the HSFCA, the following FMPs and laws, and their associated regulations, have provisions that may apply to U.S. vessels' fishing activities on the high seas:

- Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region and its amendments, 50 CFR part 665, subpart F,
- FMP for U.S. West Coast Fisheries for Highly Migratory Species and its amendments, 50 CFR part 660, subpart K,
- 2006 Consolidated Atlantic Highly Migratory Species FMP and its amendments, 50 CFR part 635,
- Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.,*
- Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.,*
- Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.,*
- South Pacific Tuna Act of 1988, 16 U.S.C. 973 *et seq.,*
- Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.,*
- Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.,*
- Endangered Species Act, 16 U.S.C. 1531 *et seq.,* and
- Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*

Any person subject to the jurisdiction of the United States must abide by the take prohibitions of, and all applicable regulations implemented under, the ESA and the Marine Mammal Protection Act (MMPA) on U.S. territory, in U.S. waters, and on the high seas, which includes, for the purposes of the MMPA and ESA, waters within foreign nations' Exclusive Economic Zones (EEZ) up to the seaward boundaries of the territorial seas of such nations. For all authorized high seas fisheries, NMFS issues permits only after a determination, in accordance with section 7 of the ESA and in consultation within NMFS or with the U.S. Fish and Wildlife Service as appropriate, that the authorization of the fishery on the high seas is not likely to jeopardize the continued existence of endangered and threatened species. 16 U.S.C. 1536. Such consultations can result in permit conditions to minimize impacts on threatened and endangered species.

Since 2009, fisheries on the high seas have been included in the List of Fisheries published each year pursuant to the MMPA. 16 U.S.C. 1387(c)(1). The List of Fisheries classifies U.S. commercial fisheries into one of three categories based on an estimated level of mortality and serious injury of marine mammal stocks incidental to commercial fishing operations. *See* 50 CFR 229.2. Category I and II fisheries are those in which incidental injury or death of marine mammals is frequent or occasional, respectively. Category II fisheries may also include fisheries for which reliable information about the frequency of incidental injury or mortality is lacking. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published. Category III fisheries are determined to have a remote likelihood of, or no known, incidental mortality or serious injury of marine mammals.

The majority of high seas fisheries are classified as Category II because of the lack of information on the frequency of incidental mortality and serious injury of marine mammals in the fisheries. Other high seas fisheries are classified as Category I, II or III because they are considered extensions of fisheries taking place within U.S. waters and therefore are classified in the same category as those fisheries. Owners of vessels with gear that fall within a Category I or II fishery are required under the MMPA regulations, as described in 50 CFR 229.4 to 229.7, to (1) register with NMFS and obtain a marine mammal authorization certificate to lawfully take a marine mammal incidental to commercial fishing and (2) carry an observer if requested by NMFS. MMPA regulations do not require owners of vessels or gear engaged in a Category III fishery to register with NMFS, obtain a marine mammal authorization certificate, or, except in limited circumstances, carry an observer pursuant to MMPA regulations.

The owner or operator of a vessel participating in a commercial fishery listed on the List of Fisheries, regardless of classification, is required to report any injury or death of a marine mammal incidental to commercial fishing operations to NMFS within 48 hours of returning from a fishing trip. 50 CFR 229.6.

**Proposed Requirements for High Seas Fishing Vessels**

The following sections provide further detail regarding proposed requirements for the permit application process, enhanced mobile transceiver units for vessel monitoring, observer coverage, transshipment on the high seas, and protection of vulnerable marine ecosystems on the high seas. A reference to the HSFCA would also be added to 50 CFR parts 600 and 660, specifically § 600.705 and § 660.2, which list laws related to the Magnuson-Stevens Act, to alert fishers who may be interested in fishing on the high seas to the requirements in 50 CFR part 300. Also, a proposed revision of § 600.745(a) would encourage any person who intends to conduct scientific research on the high seas to obtain a Letter of Acknowledgement from NMFS, as is currently done for such activities in U.S. waters. Adjustments would also be made to other parts of CFR Title 50 because of the redesignation of Subpart B to Subpart Q.

*Definitions*

Consistent with 16 U.S.C. 5502(4), NMFS proposes to revise the definition of ''high seas fishing vessel'' in 50 CFR 300.331 by adding the word ''and'' as underlined below to clarify that this term means any vessel of the United States used or intended for use: (1) On the high seas, (2) for the purpose of the commercial exploitation of living marine resources, *and* (3) as a harvesting vessel, mother ship, or any other support vessel directly engaged in a fishing operation. To clarify the meaning of support vessels directly engaged in a fishing operation, examples are included in the definition (vessels that transship fish on the high seas, provide supplies or fuel on the high seas to other fishing vessels, or conduct other activities in support of, or in preparation for, fishing).

This rule proposes to revise the regulatory definition of ''international conservation and management measures'' by adding the following sentence from the HSFCA definition: ''Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.'' The change clarifies that commitments made by the United States at international fisheries management fora can be included in the term ''international conservation and management measures'' to the extent necessary and appropriate to carry out U.S. obligations under the Compliance Agreement or for purposes of the HSFCA.

Definitions of bottom fishing, enhanced mobile transceiver unit, transship, and vessel monitoring system would be added to the HSFCA regulations and are discussed in the relevant sections below.

*Issuing Offices*

Section 300.12, redesignated as § 300.332, would be revised to specify that the Director of the NMFS Office for International Affairs and Seafood Inspection, as well as Regional Administrators, may issue high seas fishing permits for any authorized high seas fishery.

*Vessel Permits*

The permitting requirement under the HSFCA for vessels operating on the high seas, currently set forth at § 300.13 (redesignated as § 300.333), has been in effect since 1996. In general, any U.S. vessel is eligible for a high seas fishing permit unless that vessel had a permit from a foreign nation that was suspended and the suspension has not expired or, during the 3 years prior to the application date, the permit was withdrawn due to the vessel undermining the effectiveness of an international conservation and management measure.

High seas fishing permits are issued at any time of the year and are valid for 5 years from the date of issuance, as provided in the HSFCA. 16 U.S.C. 5503(f). For a permit to remain valid until its expiration date, the vessel's U.S. Coast Guard documentation or state registration must be kept current. A permit becomes immediately void when the name of the owner or vessel changes or, in the event the vessel is no longer eligible for U.S. documentation, such documentation lapses or is revoked or denied, or the vessel is removed from such documentation. § 300.333(d)(4).

In developing this proposed rule, NMFS evaluated an option to rely on fishery-specific permits for U.S. vessels operating on the high seas, other than the HSFCA permit program, to authorize high seas fishing activities. However, by continuing to require a separate high seas fishing permit, in addition to any permit required for the authorized high seas fishery in which the HSFCA permit applicant intends to fish, NMFS is able to maintain a separate and more precise record of vessels permitted to fish on the high seas and submit information from this record to the FAO as required in the Compliance Agreement. FAO compiles records of vessels authorized to fish on the high seas from the Parties to the Compliance Agreement. The separate high seas fishing permit, required under the existing regulations to be carried on board the vessel, is also useful in demonstrating to any domestic inspectors, any foreign inspectors operating under the authority of a high seas boarding and inspection scheme adopted by an RFMO to which the United States is party, or any foreign port inspectors, that a vessel is authorized to fish on the high seas.

The proposed rule (§ 300.333(b)) provides that any high seas fishing vessel engaging in fishing, as defined under § 300.2, on the high seas must have on board a valid permit issued under this subpart. Under this new paragraph and the revised definition of high seas fishing vessel, harvesting vessels, as well as vessels that are involved in processing or transshipment of fish on the high seas in fisheries where such activity is allowed, or providing supplies or fuel on the high seas to a fishing vessel, must obtain a high seas fishing permit prior to undertaking those activities.

Under proposed § 300.333(c)(3), applicants would also need to submit a color, bow-to-stern, side-view photograph of the vessel in its current form and appearance legibly showing vessel name and identification markings with each application. Vessel photographs would be made available for use by NMFS, other agencies, RFMOs, and other entities as an aid in identifying vessels authorized to fish on the high seas.

In proposed § 300.333(d), the existing timeframe for issuance of permits would be amended in light of changes in the technology now used to issue permits, which allow faster turnaround in permit processing. Specifically, NMFS will issue HSFCA permits within 15 days of receipt of a complete application and associated fees, rather than 30 days as provided in the existing HSFCA regulations. *See* § 300.13(e).

Proposed § 300.333(g) would clarify the need for high seas permit renewal applicants to comply with all applicable reporting requirements before a new permit would be issued.

The rule would also add, at § 300.333(h), a reference to MMPA requirements noting that high seas permits do not authorize vessels or persons subject to the jurisdiction of the United States to take marine mammals.

Section 300.333(i) of the proposed rule would allow NMFS to modify, suspend, or revoke high seas permits if permitted activities impact living marine resources in ways that were not foreseen or anticipated at the time of permit issuance or are in contravention of an international conservation and management measure or are in violation of any provision of domestic law. Such flexibility is needed because high seas fishing permits are valid by law for 5 years. In the event that NMFS determines that a permit must be modified, suspended or revoked, NMFS would provide written notification to the permit holder at its address of record. A permit modification, suspension or revocation under this section is not an enforcement-related permit modification, suspension or revocation subject to the process and procedures in subpart D of 15 CFR part 904.

*Fisheries Authorized on the High Seas*

NMFS issues high seas fishing permits only for fisheries where high seas fishing activities have been analyzed in accordance with the ESA, NEPA and other applicable law. Such analyses have been completed for the following fisheries:

- 50 CFR part 300, subpart C—Eastern Pacific Tuna Fisheries
- 50 CFR part 300, subpart D—South Pacific Tuna Fisheries
- 50 CFR part 300, subpart G—Antarctic Marine Living Resources
- 50 CFR part 635—Atlantic Highly Migratory Species Fisheries
- 50 CFR part 660, subpart K—U.S. West Coast Fisheries for Highly Migratory Species
- 50 CFR part 665, subpart F—Western Pacific Pelagic Fisheries
- South Pacific Albacore Troll Fishing
- Northwest Atlantic Fisheries

Under existing regulations at 50 CFR 300.212, vessels that fish on the high seas in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean must have a valid Western and Central Pacific Fisheries

Commission (WCPFC) Area Endorsement. Vessels must obtain or hold a valid high seas fishing permit to be eligible to receive the WCPFC Area Endorsement.

At the time of publication of this proposed rule, approximately 600 U.S. fishing vessels are permitted under the HSFCA to operate on the high seas. These vessels are authorized to operate in one or more of the above-authorized fisheries as specified on their high seas fishing permits.

NMFS proposes a new section 300.334 that lists the fisheries authorized on the high seas, provides for issuance of and changes to high seas fishing permits for fisheries on the list, and provides for changes to the list. Through these provisions, NMFS seeks to reinforce U.S. vessels' compliance with all domestic requirements when they are operating on the high seas.

Under proposed § 300.334(a), applicants for high seas fishing permits must identify in their application which of the authorized fisheries from the list they plan to fish in. In addition, prior to applying for a high seas permit, applicants would need to obtain any permits or other types of authorizations required to participate in an authorized fishery. As a condition of the HSFCA permit (once issued), the holder must abide by all applicable requirements associated with the underlying authorized fishery, as well as the terms and conditions of the high seas fishing permit, the HSFCA regulations, and any other applicable laws and regulations.

As noted earlier, high seas fishing permits are valid for five years from date of issuance (§ 300.333(d)), and this proposed rule would not alter the duration of validity. If, after receiving a permit, the owner or operator of the vessel seeks to change the authorized fisheries in which he or she operates on the high seas, he or she would need to request in writing such a change from NMFS and obtain any permits associated with the authorized fisheries. After confirming that the applicant has been issued any other necessary permits, and meets all other applicable criteria, NMFS would issue a new high seas fishing permit per the process in § 300.333(d) with the change in the authorized fisheries. The revised permit would be valid for the remainder of the original 5-year period.

Section 300.334(d) would provide that NMFS may add other fisheries to the list of authorized fisheries after completing any needed analyses under the ESA, NEPA, and other applicable law or policy. NMFS would add fisheries to the list through rulemaking. While NMFS may decide on its own to propose to add a fishery to the list, this proposed rule would include procedures at § 300.334(e) for a person to request that NMFS consider adding a fishery. The request would need to be in writing with a description of the species (target and incidental) expected to be harvested, the anticipated amounts of harvest and incidental catch, the approximate times when and places where fishing would take place, approximate number and types of vessels participating, or expected to participate, in the fishing activity, and the type, size, and amount of gear to be used. The request would also need to describe the specific area(s) that may be affected by the fishing activities and any anticipated impacts on the environment, including impacts on fish stocks, marine mammals, and species listed as threatened or endangered under the ESA or their critical habitat. If requested by NMFS, the applicant would be required to submit additional supporting information for NMFS to make determinations under the ESA, NEPA, or other applicable law or policy. Given the transboundary nature of many high seas fisheries and the potential impact of newly authorized high seas fisheries on domestic fishery management programs, NMFS would work with relevant NMFS regional office(s) and consult with Regional Fishery Management Council(s) to evaluate requests to authorize new high seas fisheries and, as part of that process, would publish a proposed rule in the **Federal Register** to gather public comment on such requests. Information received during the comment period may be considered by NMFS, working in conjunction with the relevant NMFS regional office(s) and in consultation with Regional Fishery Management Council(s), in its analysis to determine whether to authorize the fishery. Based on the analysis and other relevant considerations, NMFS would publish its determination in the **Federal Register** whether to add the fishery to the list of authorized high seas fisheries.

Section 300.334 (d), describes several factors that would be taken into account when considering the deletion of a fishery from the list of authorized fisheries including whether continuation of the fishery would contravene international conservation and management measures recognized by the United States or U.S. laws or regulations. For example, NMFS would remove a fishery from the list if vessels of the United States are no longer authorized to catch fish in the area of competence of the relevant RFMO. Proposals to remove a fishery from the list of authorized fisheries (*i.e.*, de-authorize the fishery), as well as any necessary changes to other regulations in this chapter and 50 CFR part 600, would be published in the **Federal Register** as a proposed rule with an opportunity for public comment. NMFS would then publish its final determination on deleting the fishery from the list of fisheries in the **Federal Register**. In addition, NMFS would provide notice of a deletion of an authorized fishery to those permit holders that have the authorized fishery specified on their high seas fishing permit and to the public via the NMFS Web site. Permit holders would no longer be able to fish in high seas fisheries that are no longer authorized, but may request authorization to fish in other, still authorized, high seas fisheries. If requested, and as appropriate, NMFS would void the original permit and issue the permit holder a revised permit, valid for the remainder of the original 5 year period, for operations in another authorized fishery.

*Protecting Vulnerable Marine Ecosystems From Significant Adverse Impacts of Bottom Fishing*

Many RFMOs recognize the need to protect vulnerable marine ecosystems (VMEs) located on the high seas from certain bottom fishing practices and are taking steps for their protection. Through this proposed rule, the United States would be similarly taking steps to protect VMEs. The characteristics of VMEs are described in the FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas. These FAO Guidelines give examples of species groups, communities and habitat forming species that may contribute to the formation of VMEs, such as certain coldwater corals and hydroids, some types of sponge dominated communities, and seep and vent communities comprised of invertebrate and microbial species found nowhere else. Examples of topographic, hydrophysical or geological features that potentially support these and other species include seamounts, guyots, banks, knolls, hills and hydrothermal vents.

The United Nations General Assembly (UNGA), through annual sustainable fisheries resolutions, calls upon States, both individually and cooperatively through RFMOs, to ensure that bottom fishing activities do not have significant adverse impacts on VMEs. The United States has strongly promoted the adoption of measures to protect VMEs by relevant RFMOs.

The UNGA resolutions call on RFMOs with competence over bottom fishing activities or flag States in areas where RFMOs have not taken action or areas where there are no relevant RFMOs to:

(1) Assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on VMEs, and to ensure that if significant adverse impact is likely to occur, such activities are managed to prevent such impacts or not authorized to proceed;

(2) Identify areas where VMEs occur or are likely to occur and assess bottom fishing impacts on such ecosystems;

(3) Close such areas to bottom fishing unless conservation and management measures have been established that prevent significant adverse impacts to VMEs; and

(4) Cease bottom fishing activities in areas where, in the course of fishing activities, VMEs are encountered and report these encounters to a relevant authority.

In its International Guidelines for the Management of Deep-sea Fisheries in the High Seas, the FAO identifies impacts as significantly adverse if they compromise ecosystem integrity, such as ecosystem structure or function, by impairing the ability of affected populations to replace themselves, degrading the long-term natural productivity of habitats, or causing, on a more than temporary basis, significant loss of species richness, habitat or community types.

Several RFMOs have competence over bottom fishing activities. Four of these RFMOs existed prior to the most recent publication in the **Federal Register** of international conservation and management measures recognized by the United States: Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Northeast Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Organization (NAFO), and Southeast Atlantic Fisheries Organization (SEAFO). Each of these four bodies adopted conservation and management measures in accordance with UNGA resolutions 61/105 and 64/72 related to protection of VMEs. The United States is a member of CCAMLR and NAFO, and thus, is obligated to abide by their conservation and management measures. The United States recognizes the conservation and management measures adopted by NEAFC and SEAFO under the HSFCA, and thus prohibits U.S. fishing vessels from acting in contravention of them (76 FR 28954, May 19, 2011).

The UNGA resolutions call upon States to develop new RFMOs in areas where no organization or arrangement with the competence to manage bottom fisheries exists and to develop and agree to implement interim measures until binding conservation measures can be implemented. The United States participated in negotiations in the North and South Pacific for the establishment of two new RFMOs with such competency. In the North Pacific, a treaty, the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, has been negotiated but has not yet entered into force. The United States has signed the treaty and is undertaking the domestic process to ratify the treaty. The participants have developed two sets of interim measures for the protection of VMEs, one for the eastern and the other for the western portion of the area where the treaty would apply.

In the South Pacific, the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean entered into force on August 24, 2012, creating the South Pacific Regional Fisheries Management Organisation (SPRFMO). While the United States is not currently a party to the Convention, the United States participates in the SPRFMO as a Cooperating non-Contracting Party, has signed the treaty, and is undertaking the domestic process to ratify it. SPRFMO adopted a conservation and management measure in January 2014 in accordance with UNGA resolutions 61/105 and 64/72.

Under § 300.335 of this proposed rule, bottom fishing would only be permitted on the high seas in accordance with international conservation and management measures recognized by the United States. Currently, CCAMLR, NAFO, NEAFC and SEAFO have such measures, as discussed above. A person seeking to engage in bottom fishing not subject to international conservation and management measures recognized by the United States must request authorization of a new high seas fishery as described in § 300.334(e) and then, if the fishery is authorized, obtain a high seas permit authorizing participation in the fishery. See ''Fisheries Authorized on the High Seas'' section above. NMFS may specify conditions in the permit to mitigate adverse impacts on VMEs, which may include the types of conditions that have been adopted in relevant RFMO measures recognized by the United States. Procedures for permits under § 300.333 and changes to existing permits under § 300.334 would be used for bottom fishing permitting. Consistent with the FAO's International Guidelines for the Management of Deep-sea Fisheries in the High Seas, NMFS is proposing to define bottom fishing as fishing using gear that is likely to contact the seafloor during the normal course of fishing operations.

*Vessel Identification*

To clarify the type of vessel length used in determining the required sizing of vessel markings, the word ''overall'' would be added after ''length,'' in § 300.336(b)(2)(v) in the proposed rule (§ 300.14(b)(2)(v) in the existing regulations). This revision to the regulatory text is consistent with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. No other changes to this section are proposed.

*Requirements for Enhanced Mobile Transceiver Units (EMTUs)*

NMFS published a final rule for VMS type-approval on December 24, 2014. See 79 FR 77399. Those regulations are codified at 50 CFR part 600, subpart Q (national VMS regulations). As defined in the VMS type-approval regulations, vessel monitoring system, or VMS, refers to a satellite based surveillance system designed to monitor the location and movement of vessels using onboard transceiver units that send global positioning system location reports to a monitoring entity. An enhanced mobile transceiver unit (EMTU) is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard which is installed on a fishing vessel, and is capable of supporting two-way communication, messaging, and electronic forms transmission, and is an example of the device that provides the vessel location reports as part of a VMS.

Under § 300.337 of this proposed rule, NMFS would require all vessels permitted to operate on the high seas, or subject to those permitting requirements, to have an installed and activated NMFS-type-approved EMTU on board. NMFS will not issue or renew a high seas fishing permit unless the vessel has an installed and activated NMFS-type-approved EMTU that reports automatically to NMFS (§ 300.333(d)(2) and (g)).

NOAA's Office of Law Enforcement (OLE) currently type-approves EMTUs and mobile communication services (MCS) associated with the EMTUs based on requirements outlined in the national VMS regulations. OLE periodically publishes a list of type-approved EMTUs and MCS in the **Federal Register**. Vessel owners also would

need to comply with any other applicable VMS requirements set forth under applicable fishery-and region-specific regulations and the national VMS regulations. The owner or operator of the vessel would need to work with a divisional office of the NOAA Office of Law Enforcement, preferably the office in, or nearest, the NMFS Region that is issuing the high seas fishing permit, to ensure that their EMTU properly reports positions to NMFS.

This proposed rule would require the continuous operation of the EMTU, with hourly transmission of position reports whenever a U.S. vessel with a high seas permit is on the high seas. In addition, the vessel must comply with any other position reporting requirements applicable to the specific fisheries in which it is authorized to participate. The proposed requirement will strengthen NMFS' ability to ensure that U.S. high seas vessels do not undermine international conservation and management measures recognized by the United States.

A vessel would be exempt from these requirements and could power down the EMTU when the vessel remains at a dock or permanent mooring for more than 72 consecutive hours (referred to as the in-port exemption in the proposed rule) or when it participates in a domestic fishery within the U.S. EEZ, for 30 or more consecutive days, and there are no other applicable requirements for any EMTU or VMS unit operation for those activities or fishery (referred to as the long-term exemption in the proposed rule). Prior to powering down, the high seas permit holder would be required to notify the OLE divisional office, via email or other means as directed by the OLE divisional office, the following information: The vessel's name; the vessel's official number; the intent to power down the EMTU; the applicable exemption that allows for power-down; and full name, telephone, and email contact information for the vessel owner or operator. If the in-port exemption is being invoked, the high seas permit holder must also include in the above notification the name of the port where the vessel will be docked or at permanent mooring and the amount of time the vessel is expected to remain there. If the long-term exemption is being invoked, the high seas permit holder must include information in the above notification that describes the activities or fishery the vessel will be engaged in and estimated duration.

When powering up the EMTU after an in-port exemption, the vessel owner or operator would need to report to the OLE divisional office the following information: That the EMTU has been powered up; the vessel's name; the vessel's official number; port name; fishery where the vessel intends to operate; and full name, telephone, and email contact information for the vessel owner or operator. The vessel owner or operator needs to make this report to the OLE divisional office, during office hours, at least 2 hours before leaving port or mooring. When powering up after a long-term exemption, the vessel owner or operator would need to notify the OLE divisional office with the previously described information, during office hours.

When powering up after either exemption, the vessel owner or operator would need to receive email confirmation from the OLE divisional office that EMTU transmissions are being properly received. This confirmation would need to be received before leaving port, after an in-port exemption, or before entering the high seas or a fishery that requires EMTU operation, after a long-term exemption.

Many HSFCA-permitted vessels are already required to operate EMTUs when at sea because they participate in fisheries with domestic EMTU requirements. Satisfying those requirements would satisfy the proposed HSFCA requirement, if the EMTU is operating at all times, providing hourly position reports while on the high seas, and the EMTU activation and power-down/power-up procedures are the same or are more restrictive than these proposed HSFCA requirements. VMS requirements that currently apply on the high seas include the following regulations:

- § 660.712(d) for longliners in the U.S. West Coast fisheries for highly migratory species (HMS) (these units are owned and installed by NMFS),
- § 665.19 for Western Pacific pelagic fisheries (these units are owned and installed by NMFS),
- § 300.219 for Western and Central Pacific fisheries for HMS,
- § 300.45 for South Pacific tuna fisheries,
- § 635.69 for Atlantic HMS fisheries, and
- § 300.116 for harvest of Antarctic marine living resources.

High seas fishing vessels that would need to purchase, install, activate, and operate EMTUs as a result of this proposed rule include vessels other than longliners participating in the U.S. West Coast fisheries for HMS, longline vessels less than 40 feet in length overall in the Western Pacific pelagic fisheries, vessels in the Atlantic HMS fisheries that do not use pelagic longline gear, and certain vessels in the Atlantic HMS fisheries that use shark bottom longline and gillnet gear.

In the case of failure of the EMTU while at sea, the vessel operator, owner, or designee would be required to notify the OLE divisional office and follow instructions provided, which could include actions described under proposed § 300.337(e)(2). The EMTU would then need to be repaired or replaced and operating within 30 days or before starting the next trip, whichever is sooner.

For communicating with enforcement authorities about the functioning of the EMTU and other purposes, operators of vessels would be required to carry on board and continuously monitor a two-way communication device capable of real-time communication with the OLE divisional office. The device must be capable of transmitting position reports, or the vessel must have a separate device for transmitting position reports, in the event the EMTU fails.

The vessel owner or operator would be responsible for all costs associated with the purchase, installation and maintenance of the EMTU, and for all charges levied by the vendors as necessary to ensure the transmission of automatic position reports to NMFS. However, if the EMTU is being carried and operated in compliance with the requirements in 50 CFR part 300, 50 CFR part 660, or 50 CFR part 665 relating to the installation, carrying, and operation of VMS units, the vessel owner and operator would not be responsible for costs that are the responsibility of NMFS under those regulations.

Vessel owners or operators who purchase an EMTU for the purpose of complying with Federal VMS regulations such as those in this rule, if finalized, may be eligible for a one-time reimbursement per vessel. See 73 FR 24955, May 6, 2008, for details.

*Requirement for Observers*

Observers provide NMFS with information on fishing effort and catch of target species and non-target species, including protected species (such as marine mammals, sea turtles, and seabirds) pursuant to various legal authorities, including the Magnuson-Stevens Act, ESA, MMPA, the implementing legislation of international or regional treaties to which the United States is party, or regulations promulgated under those statutes. An observer under this proposed rule is defined as any person serving in the capacity of an observer employed by NMFS, either directly or under contract with a third party, or certified as an observer by NMFS

(§ 600.10). Under § 300.338 of this proposed rule, NMFS would require a vessel permitted pursuant to the HSFCA, if directed by NMFS, to carry an observer during a fishing trip with operations on the high seas. This requirement would not be invoked by NMFS if the vessel will already be carrying an observer pursuant to other legal authorities. While the vessel may be required to cover the costs of an observer under other applicable laws, NMFS would fund the cost of the observer's salary and benefits when placed on board pursuant to this rule. If and when a mechanism is established whereby the fishing vessel could pay these costs without any conflict of interest, the vessel could be responsible for all or a portion of these costs.

Currently, there are different fishery-specific observer requirements. In some fisheries authorized on the high seas, an observer must be on board every fishing trip, such as on the Class 6 purse seine vessels (vessels with well volume carrying capacity in excess of 425 cubic meters) operating in the Pacific tuna fisheries. In others, such as the pelagic longline vessels in the Atlantic HMS fisheries, only a portion of vessel trips are selected for observer coverage. Certain fisheries on the high seas currently do not require carrying an at-sea observer, such as the South Pacific albacore troll fisheries, some Class 5 (vessels with well volume carrying capacity between 319 and 425 cubic meters) and all Class 1 to 4 purse seine vessels fishing in the U.S. West Coast Fisheries for Pacific HMS, some longliners in the Western Pacific pelagic fishery, and vessels less than 40 feet in length overall in the American Samoa longline fishery. However, these and any other commercial HMS vessels are subject to WCPFC observer deployment under WCPFC regulations for fishing trips during which the vessel at any time enters or is within the WCPF Convention Area.

This proposed rule would allow NMFS to place an observer on board a high seas fishing vessel where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures. Such additional coverage would enhance NMFS' ability to collect fishery dependent data needed for fishery management. A vessel would be selected for observer deployment using a sampling scheme to be developed by NMFS, based on the need to obtain information on high seas activities.

The owner or operator of a vessel that is selected for observer deployment under this rule would be required to notify NMFS before commencing any fishing trip that takes place on the high seas. In the letter to the vessel owner or operator informing him/her of the selection for observer deployment, NMFS would specify notification procedures and information requirements such as expected gear deployment, trip duration, and fishing area. Requirements pertaining to observer deployment, including the requirement to provide the observer access to, for example, vessel communications and navigation equipment and cooperate with observers are included in the proposed rule. Observer safety requirements set forth at § 600.746 would also apply, as well as the associated prohibitions in § 600.725(q) through (u). These sections require vessels carrying observers to have a valid U.S. Coast Guard Commercial Fishing Vessel Safety decal and take other steps to ensure safe conditions aboard the vessel.

*Transshipment on the High Seas*

At-sea transshipment, defined in this proposed rule at § 300.331 as offloading or receiving or otherwise transferring fish or fish products from one fishing vessel to another, allows harvesting vessels to continue operations for longer periods when they are in waters far from ports. At-sea transshipment can also be used to obscure the origin of illegally-caught fish so that the product can be placed into commerce in contravention of regulations designed to eliminate illegal, unreported and unregulated (IUU) fishing practices. Unreported and unregulated transshipments at sea can contribute to inaccurate reporting of catches and can support IUU fishing activities. Improved oversight of transshipment taking place on the high seas would promote compliance with international conservation and management measures and help deter IUU fishing.

The proposed definition of transship or transshipment would exclude ''net sharing,'' that is, the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one fishing vessel to another fishing vessel. Fish would be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

In those instances where transshipment on the high seas is not prohibited under other legal authorities, this proposed rule requires that U.S. high seas fishing vessels involved in transshipment on the high seas have on board a high seas fishing permit (§ 300.333(b)). The permitting requirement applies to both the vessel offloading the fish or fish product and the vessel receiving the fish or fish product. In addition to any other applicable requirements, under § 300.339(b), the owner or operator of a U.S. vessel receiving or offloading fish or fish product on the high seas must notify NMFS at least 36 hours prior to each transshipment event, and submit a report on the transshipment event within 15 days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director who issued the high seas fishing permit.

The owner or operator of U.S. vessels receiving or offloading fish on the high seas would need to include the following information in the prior notification: The vessels participating in the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment, date and time that transshipment is expected to occur, and species, processed state, and quantities (in metric tons) expected to be transshipped. Each transshipment would require a separate notice and report. As some of the information might be known by only the receiving vessel operator and some of the information might be known only by the offloading vessel operator, the operators of both vessels may need to exchange information regarding transshipment activities. In authorized fisheries where equivalent or more restrictive domestic transshipment notification and reporting regulations apply, fulfillment of such regulations would satisfy the requirements under this proposed rule.

The following are examples of existing at-sea transshipment restrictions and reporting requirements that already apply to high seas fishing vessels (all citations are to 50 CFR):

- § 300.24(d) of the Eastern Pacific Tuna Fisheries regulations prohibits the transshipment of purse seine caught tuna in the Inter-American Tropical Tuna Commission (IATTC) Convention Area.
- § 300.112(k) requires U.S. flagged vessels that receive or attempt to receive *Dissostichus* species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, to obtain from NMFS a harvesting permit authorizing transshipment. CCAMLR conservation measures also require advance notification for transshipment of Antarctic marine living resources and other materials (*e.g.*, bait, fuel) in the CAMLR Convention area. All transshipments of *Dissostichus* species must be reflected in the *Dissostichus* Catch Document regardless of where the transshipment occurs.

• § 635.29(a) prohibits at-sea and in port transshipment of any tuna or tuna-like species, or other highly migratory species, regardless of where the fish were harvested. However, an owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued under § 635.4 may transfer large, medium, and giant bluefin tuna at sea from the net of the catching vessel to another vessel for which an Atlantic Tunas Purse Seine category permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

• For U.S. West Coast fisheries for HMS, the operators of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must fill out information on the date, transshipper, and amount transshipped on report forms provided by the Western Regional Administrator or a state agency (§ 660.708(a)). Thus, the albacore trollers, pole and line vessels, and other vessels that fish for HMS on the high seas are subject to this reporting requirement.

• For Western Pacific pelagic fisheries, regulations set forth at § 665.14(c) require operators of vessels receiving transshipments to keep records and submit information on transshipments that occur in the EEZ. Specifically, any person subject to the requirements set forth in § 665.801(e)—which pertains to longline and other pelagic fishing within the EEZ or landing or transshipping pelagic species within the EEZ—must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Pacific Islands Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Pacific Islands Regional Administrator within 72 hours of each landing of western Pacific pelagic species.

• For the WCPF Convention Area, NMFS regulations prohibit transshipments at sea involving purse seine vessels in the WCPF Convention Area as well as transshipments to and from purse seine vessels of fish caught in the WCPF Convention Area and transshipped outside the WCPF Convention Area. 50 CFR 300.216(b). However, net sharing between purse seine vessels is allowed in the WCPF Convention Area in limited circumstances. 50 CFR 300.216(c). For transshipments that are not prohibited, owners and operators of each vessel involved in a transshipment in the WCPF Convention Area or a transshipment of fish caught in the Convention Area and transshipped anywhere are required to complete a specific report form and to submit that form to NMFS. 50 CFR 300.218(b). Vessels are required to notify the WCPFC when such transshipment occurs on the high seas or when an emergency transshipment that would otherwise be prohibited occurs. Notices for high seas transshipments need to be submitted to the WCPFC at least 36 hours before the transshipment and notices for emergency transshipments must be submitted within 12 hours after completion of the emergency transshipment.

*Prohibitions*

The proposed rule would redesignate the existing prohibitions in §§ 300.15 to 300.340, and would add prohibitions to clarify that a high seas vessel: Must have on board a valid permit; may not fish on the high seas unless any and all permits related to the authorized fisheries noted on the high seas permit are valid; must follow new requirements related to the use of an EMTU; must follow new requirements with respect to observers, must follow new reporting requirements with respect to transshipments; and must follow reporting requirements of the authorized fishery(ies) noted on the high seas permit.

*Penalties*

NMFS proposes to remove the penalties section in the existing regulations, as these penalties are adequately addressed in the HSFCA itself and do not need to be repeated in these regulations.

*Catch and Effort Reporting Requirements*

The proposed rule would modify the catch and effort reporting requirements to clarify the information that must be maintained on board a vessel and reported to NMFS.

Under the proposed rule, the references to the regulations in the existing version of § 300.17 would be removed. The references to the regulations of each authorized fishery would be provided in § 300.334 instead. The vessel owner and operator would be responsible for obtaining from their Regional Administrator the appropriate forms for their authorized fishing activities and submitting the reports within the deadlines of the authorized fisheries or within 15 days following the end of a fishing trip, whichever is sooner. The reference in current regulations to MSA confidentiality provisions in § 300.17(c) would be deleted.

*Scientific Research Activities*

Existing regulations set forth at §§ 600.512(a) and 600.745(a) encourage persons planning scientific research activities in the U.S. EEZ using foreign vessels or U.S.-flagged vessels to submit their research plan to the appropriate Regional Administrator or Science Center Director and obtain a letter of acknowledgement. Under the proposed rule, the phrase ''or on the high seas'' would be added in § 600.745(a) so that any person who would use a U.S. vessel for research activities on the high seas would also be encouraged to submit their research plan and obtain a letter of acknowledgement. The scientific research plan should be submitted 60 days, or as soon as practicable, prior to the start of the research activities. This is not intended to inhibit or prevent any scientific research activity conducted on the high seas, and is in addition to any requirements that may apply to such research under RFMO conservation and management measures or other applicable law.

*Publication of International Conservation and Management Measures*

HSFCA section 105(e) (16 U.S.C. 5504(e))requires the Secretary, in consultation with the Secretary of State, to periodically publish in the **Federal Register** a notice listing ''international conservation and management measures recognized by the United States.'' The latest listing was published on May 19, 2011 (76 FR 28954).

**Request for Comments**

NMFS is requesting comments on any of the requirements or analyses described in the proposed rule. Furthermore, NMFS requests comments on the following topics:

1. The time it takes to procure an EMTU and have it installed. Currently, NMFS is considering requiring that vessel owners have an EMTU installed and operational within 90 days of publication of the final rule;

2. The number of hours and costs associated with having the EMTU installed by a qualified marine electrician;

3. Current levels of transshipment on the high seas involving U.S. vessels and the areas where the transshipments occur; and

4. The fisheries in state waters, territorial seas, or within the EEZ in which high seas fishing vessels participate and details on how vessels transit from the high seas to those fisheries.

**Classification**

This proposed rule is published under the authority of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*). The NMFS Assistant Administrator has determined that this proposed rule is consistent with this and other applicable laws, subject to further consideration after public comment.

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

*Regulatory Flexibility Act*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained above in the first few paragraphs of the **SUPPLEMENTARY INFORMATION** section. The analysis follows. A copy of the analysis is available from NMFS (see **ADDRESSES**).

**Description and Estimate of the Number of Small Entities**

The proposed rule would apply to owners and operators of U.S. fishing vessels operating on the high seas, including harvesting vessels, refrigerated cargo vessels, and other vessels used to support fishing. There are approximately 600 U.S. vessels permitted under the HSFCA to fish on the high seas. The majority of these permitted vessels are longliners, purse seiners, trollers, or pole and line vessels that fish for highly migratory species. There are also small numbers of gillnetting, squid jigging, hand or other lining, multipurpose, and trawl vessels.

In this RFA analysis, an individual vessel is the proxy for each business entity. Although a single business entity may own multiple vessels, NMFS does not have a reliable means at this time to track ownership of multiple vessels to a single business entity. Based on limited financial information about the affected fishing vessels, NMFS believes that all the affected fish harvesting businesses, except for the Pacific tuna purse seine vessels, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $20.5 million.

*Projecting Reporting, Record-Keeping, and Other Compliance Requirements*

For each element of the proposed rule, the analysis of impacts to small entities is described below.

*Permit Application Process.* NMFS currently authorizes fisheries on the high seas only after appropriate reviews are completed pursuant to the ESA, MMPA, NEPA, and other applicable law. Applicants select from a list of such authorized fisheries when applying for a high seas fishing permit. The proposed rule would codify this procedure. Vessel owners and operators apply for a high seas fishing permit every 5 years, paying an application fee currently set at $129 and completing the application form, which is estimated to take 30 minutes. The rule would not change these burdens.

The proposed rule would be explicit about the requirement that vessels harvesting or participating in operations on the high seas in support of harvesting, such as transshipment and provision of supplies or fuel, have on board a valid high seas fishing permit. NMFS expects this aspect of the proposed rule to result in few additional applications for high seas permits, if any, because transshipment of fish on the high seas is prohibited in some fisheries and where it is not prohibited, records show few instances of transshipment. NMFS is not aware of any U.S. vessels that provide supplies or fuel to harvesting vessels on the high seas.

The rule would require a photograph of the high seas fishing vessel to be submitted with the permit application. The time necessary to photograph the vessel, print or scan the photograph, and attach it to the application is estimated to take 30 minutes per application.

The proposed rule would allow a person, which could include an organization or a group of persons, to request NMFS add a fishery authorized on the high seas. A request would need to include the following information:

(a) The species (target and incidental) expected to be harvested and the anticipated amounts of harvest and bycatch.

(b) The approximate times and places fishing will take place, approximate number of vessels participating, and the type, size, and amount of gear to be used.

(c) A description of the specific area that may be affected by the fishing activities.

(d) A description of any anticipated impacts on the environment, including impacts on fish stocks, marine mammals, species listed as threatened or endangered under the ESA or their critical habitat.

(e) If requested by NMFS, any additional information necessary for NMFS to conduct analyses under ESA, MMPA and NEPA.

Making the request to add an authorized fishery is expected to take approximately 110 hours. This time would be spent gathering and compiling the required information. NMFS does not expect such requests on a regular basis. For the purposes of this IRFA, NMFS estimates that one request might be submitted every 5 years. The impact from this aspect of the proposed rule is not expected to be significant because this is not a requirement, but an option for the public, and such requests are expected to be made infrequently.

*Installation and Operation of EMTUs.* The proposed rule would require the installation of EMTUs on all high seas fishing vessels. The EMTU would need to be operated at all times, except when the vessel will be at a dock or permanent mooring for more than 72 consecutive hours, or when the vessel will not operate on the high seas or in any fishery that requires EMTU operation for more than 30 consecutive days. Notices prior to EMTU power-down and power-up would need to be provided to NMFS.

Under the proposed rule, approximately 200 of the currently permitted high seas fishing vessels would need to install an EMTU. The remaining 400 or so vessels currently holding high seas fishing permits are already subject to EMTU requirements and would not bear any additional compliance costs as a result of this proposed rule.

The majority of the approximately 200 affected vessels would likely be albacore trollers operating in the Pacific Ocean. These vessels have generally not been subject to VMS requirements contained in other regulations. The cost of compliance with this requirement includes the cost of purchase, installation, maintenance, and operation of the EMTU. The costs of purchase and installation are treated as one-time costs because this analysis shows costs just in the near-term future. Table 2 summarizes the costs associated with the EMTU requirement in the proposed rule. A description of the estimates and calculations used in Table 2 is provided below the table.

TABLE 2—ESTIMATED COSTS OF COMPLIANCE WITH EMTU REQUIREMENTS

| Description | Cost |
|---|---|
| EMTU purchase | Up to $3,100. |
| Installation cost (one-time) | $50–400 ($400 used for estimation). |
| Daily position report costs (Hourly, 24/day; $0.06/report *24 reports/day) | $1.44. |
| Annual position report cost per vessel ($1.44/day * 365 days/year) | $525/vessel. |
| Annual EMTU maintenance cost | $50–100 ($100 used for estimation). |
| Total cost per vessel (Year 1; unit + installation + position reports) | $4025. |
| Total cost per vessel after reimbursement of EMTU cost (for eligible vessels only) | $925. |
| Cost per vessel (Year 2 and beyond; position reports and EMTU maintenance) | $625/vessel. |
| Number of affected vessels | 200. |
| Total cost (Year 1; total cost per vessel before reimbursement * number of affected vessels) | $805,000. |
| Total cost (Year 2 and beyond; total cost per vessel * number of affected vessels) | $125,000. |

Units would need to be installed by a qualified marine electrician. Based on experience in other fisheries with EMTU requirements, NMFS suggests that installation cost can range from $50 to $400, depending on the vessel, proximity to the installer, and the difficulty of the installation. For estimation purposes, $400 was used to calculate the costs of compliance with this proposed rule. NMFS is interested in receiving public comment on these values to refine estimates of the economic impacts on the affected vessels.

The cost of transmitting data through the EMTU depends on the type of EMTU installed and the communication service provider selected. For the purposes of this rulemaking, NMFS is assuming the cost of EMTU position data transmissions is approximately $0.06 per transmission. This equates to $1.44 per day for the location reports, at a rate of one transmission per hour. Providing position reports throughout the year could cost a high seas fishing vessel $525 (365 days per year * 24 position reports per day * $0.06 = $525).

The EMTU may be powered down if the vessel would be at the dock or mooring for more than 72 consecutive hours or if the vessel, for 30 or more consecutive days, would not be operating on the high seas or participating in a fishery that requires EMTU operation. A message notifying NMFS of the power-down must be sent to NMFS prior to powering down the unit and again when the EMTU will be powered back up. If an EMTU is powered down for portions of the year, the actual annual cost of transmitting position data would be less. Thus the annual costs of EMTU operation could vary among individual vessels depending on the number of days an EMTU may be powered down.

The cost of compliance for vessel owners is estimated to be $4,025 per vessel in the first year (Table 2). This is the cost of compliance prior to receiving reimbursement for the cost of the EMTU. Reimbursement funds of up to $3,100 per VMS unit would reduce the cost to $925 per vessel, on average, for reimbursement-eligible vessels. The cost of operating the EMTU in year two and beyond would include the cost of sending position reports and maintenance and is estimated to be $625.

Aside from the costs of purchase, installation, and operation of EMTUs, vessel owners or operators would need to spend time purchasing a unit, having it installed, and submitting an installation and activation report form. These steps are estimated to take an average of 4 hours. The notices prior to power-down and powering back up the EMTU are estimated to take 10 minutes each.

The compliance cost of obtaining, carrying on board, and monitoring the required communication devices is expected to be zero, as NMFS believes all affected small entities already carry and monitor such devices.

*Requirement to Carry an Observer.* Under the proposed rule, a high seas fishing vessel would be required to carry an observer for the duration of a fishing trip, if so selected by NMFS. When an observer is deployed pursuant to the proposed rule, NMFS would pay the cost of the observer's salary and benefits. If and when a mechanism is established, through a future rulemaking, whereby the fishing vessel could pay these costs without any conflict of interest, the vessel could be responsible for all or a portion of these costs. Most high seas fishing vessels are already subject to requirements for carrying an observer. For example, in the shallow-set and deep-set longline sectors of the Hawaii longline fleet, 100 percent and approximately 20 percent of fishing trips, respectively, are covered by observers. In authorized fisheries where observers are placed on all participating vessels pursuant to other regulations, the compliance cost of the proposed rule would be nil.

In high seas fisheries where only a portion of the high seas fishing vessels are selected for observer coverage, the possibility of being selected to carry an observer would increase under this proposed rule. Vessels that are not already subject to any other observer requirements could be selected to carry observers under the proposed rule. This includes, but is not limited to, South Pacific albacore trollers, purse seine vessels of Class 5 or smaller participating in the Eastern Pacific tuna fisheries, and some longline vessels in Western Pacific pelagic fisheries.

If a vessel is selected for observer coverage under this rule, the vessel owner or operator would be required to provide NMFS a notice of their next fishing trip. This notification is estimated to take 5 minutes and cost $1 in communication costs.

For trips on which an observer is deployed under this new requirement, the affected entity would be at least responsible for the costs associated with providing the observer with food, accommodations, and medical facilities. These costs are expected to be $20 to $50 per day. If the affected entity is also responsible for the cost of the observer's salary and benefits because a mechanism is established whereby the fishing vessel pays these costs, the range would be $250 to $500 per day. Assuming a high seas fishing trip averages 20 days in duration, the estimated cost of compliance for accommodating an observer on a vessel would be between $400 and $1,000 if the entity is responsible for only food, accommodations, and medical facilities, or between $5,000 and $10,000 if the entity will also bear the cost of the observer's salary and benefits.

*Transshipment Notices and Reports.* For owners and operators of vessels involved in offloading or receiving a transshipment of fish or fish product on the high seas, the proposed rule would

require vessel owners or operators to provide to NMFS notice of transshipments at least 36 hours prior to any transshipment on the high seas and to submit to NMFS reports of transshipment following the transshipment events.

Transshipment is also regulated under other applicable law. For example, in the Atlantic Ocean, transshipments are generally prohibited, with some exceptions. In the Pacific Ocean, purse seine vessels are prohibited from transshipping in some instances. NMFS is aware that during 2006 to 2009, four to eight vessels offloaded longline-caught fish each year and four to eight vessels received longline-caught fish each year. It is likely that most of these transshipments took place at sea by the Hawaii-based longline fleet, but it is unknown how many of these transshipments took place on the high seas. NMFS also has data on past transshipments on the high seas involving a few U.S. albacore troll vessels.

Each transshipment notice is estimated to take about 15 minutes and no more than $1 in communication costs to prepare and submit to NMFS.

Each transshipment report is estimated to take about 60 minutes and $1 in communication costs for submitting each report to NMFS. Thus, for each transshipment event on the high seas, the time burden is estimated to be 1 hour and 15 minutes and cost $2 for each U.S. flagged vessel involved in the transshipment.

*Reporting Requirements.* Existing regulations require submission of high seas fishing logbooks. This proposed rule deletes that requirement under the HSFCA, and instead, provides that owners and operators of high seas fishing vessels would use the reporting forms developed for their authorized fisheries to report high seas catch and effort information. Given that the former reporting requirements would not be changed in a substantive way, the associated compliance cost would be unchanged.

The reporting requirements described above would amend an existing collection of information, (OMB Control No. 0648–0304) and these amendments are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Summary.* The proposed rule would increase the cost of operating on the high seas for all affected entities. Fulfillment of these requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

Significant Alternatives Considered

NMFS attempted to identify alternatives that would accomplish the objectives of the rulemaking and minimize any significant economic impact of the proposed rule on small entities.

The alternative of taking no action was rejected because it would fail to achieve the objectives of the rulemaking.

NMFS evaluated an option to rely on existing permit programs, other than the HSFCA permit program, to authorize high seas fishing activities. However, by continuing to require the separate HSFCA permit, NMFS is able to maintain a separate record of vessels permitted to fish on the high seas, facilitating NMFS' ability to submit information regarding U.S. high seas vessels to the FAO as required in the Compliance Agreement. FAO compiles from the Parties to the Compliance Agreement records of vessels authorized to fish on the high seas. The separate HSFCA permit, required under the existing regulations to be carried on board the vessel, is also useful in demonstrating to any domestic inspectors, foreign inspectors operating under the authority of a high seas boarding and inspection scheme adopted by an RFMO to which the United States is party, or foreign port inspectors, that a vessel is permitted to fish on the high seas.

With respect to the EMTU requirement, one alternative would be to require EMTU operation at all times, which would provide NMFS the ability to monitor a vessel's location at any time. However, NMFS is aware that some vessels holding high seas fishing permits may remain in the EEZ for extended periods and are not currently subject to EMTU operation requirements while in the EEZ. Some of these vessels may also dock their vessels and not engage in fishing for portions of the year. This alternative is not preferred because the regulatory burden could be minimized by providing some exemptions to the EMTU operation requirement, such as exemptions to address the two circumstances described above. The preferred alternative would maintain the ability to monitor high seas fishing vessels yet minimize the regulatory burden.

Another alternative would be to require EMTU operation only on the high seas. However, allowing units to be powered down while a vessel is in the EEZ of the U.S. or of another country would weaken the effectiveness of using EMTU position information to monitor the locations of high seas fishing vessels. For vessels that are highly mobile and could operate at any time of the year, such as many high seas fishing vessels, EMTUs are more effective if they remain in operation at all times. Allowing power-downs whenever in the EEZ, aside from the in-port and long-term exemptions provided in the proposed rule, could also encourage non-compliance and result in large gaps in NMFS' ability to monitor high seas fishing vessels. Thus, this alternative is not preferred.

With respect to the requirement for prior notice of high seas transshipments, one alternative would be to allow affected entities to provide the notice of high seas transshipment to NMFS at least one business day in advance of the transshipment, rather than 36 hours as proposed. However, a shorter advance notice would reduce opportunities for NMFS or the U.S. Coast Guard to observe transshipments in the event they are able to meet the transshipping vessels at sea. For this reason, this alternative is not preferred.

With respect to the transshipment reporting requirements, one alternative would be to impose a different timeframe for submission of the report. The report could be submitted more than 15 days after completion of the transshipment. However, NMFS believes 15 days is a reasonable timeframe, and that extending it further could lead to NMFS not receiving transshipment reports in a timely manner and would not support collection of complete information regarding authorized fisheries.

Duplicative, Overlapping, and Conflicting Rules

The proposed rule has been prepared to be consistent with a number of regulations. These include the following:

- 50 CFR part 300, subpart C—Eastern Pacific Tuna Fisheries
- 50 CFR part 300, subpart D—South Pacific Tuna Fisheries
- 50 CFR part 300, subpart G—Antarctic Marine Living Resources
- 50 CFR part 300, subpart O—Western and Central Pacific Fisheries for Highly Migratory Species
- 50 CFR part 635—Atlantic Highly Migratory Species Fisheries
- 50 CFR part 660, subpart K—Pacific Highly Migratory Species Fisheries
- 50 CFR part 665, subpart F—Western Pacific Pelagic Fisheries

Below are some NMFS regulations that have the same or similar regulatory goals and regulate the same classes of industry as the proposed rule. Although the regulations and the proposed rule contain the same or similar elements,

the proposed rule has been drafted so that an entity would need to follow the more restrictive set of requirements with respect to EMTUs, observers, and transshipment where applicable.

VMS EMTU requirements:

- § 300.45 (South Pacific Tuna Fisheries)
- § 300.116 (Antarctic Marine Living Resources)
- § 300.219 (Western and Central Pacific Fisheries for HMS)
- § 635.69 (Atlantic HMS)
- § 660.359 (Pacific Coast Groundfish Fisheries)
- § 660.712(d) (U.S. West Coast Fisheries for HMS)
- § 665.19 (Western Pacific Pelagic Fisheries)
- § 679.28 (Fisheries of the EEZ off Alaska)

Observer requirements:

- § 300.22 (Eastern Pacific Tuna Fisheries)
- § 300.43 (South Pacific Tuna Fisheries)
- § 300.113 (Antarctic Marine Living Resources)
- § 300.215 (Western and Central Pacific Fisheries for HMS)
- § 635.7 (Atlantic HMS)
- § 660.719 (U.S. West Coast Fisheries for HMS)
- § 665.808 (Western Pacific Pelagic Fisheries)

Transshipment notices and reporting requirements:

- § 300.46 (South Pacific Tuna Fisheries)
- § 300.112(k) (Antarctic Marine Living Resources)
- § 300.218 (Western and Central Pacific Fisheries for HMS)
- § 665.801 (Western Pacific Pelagic Fisheries)
- Final rule (77 FR 71501, January 2, 2013) for the Western and Central Pacific Fisheries for Highly Migratory Species

*National Environmental Policy Act*

As stated in NOAA's Administrative Order (NAO) 216–6 5.05b, an action should be evaluated to determine whether it falls into a category of actions that do not individually or cumulatively have a significant impact on the quality of the human environment, and thus, is exempt from further environmental review under NEPA. That analysis should determine if (1) a prior NEPA analysis for the ''same'' action demonstrated that the action will not have significant impacts on the quality of the human environment (considerations in determining whether the action is the ''same'' as a prior action may include, among other things, the nature of the action, the geographic area of the action, the species affected, the season, the size of the area, etc.) or (2) the action is likely to result in significant impacts, as defined in 40 CFR 1508.27 and NAO 216–6 Section 6.01b. NMFS analyzed the proposed rule using these criteria and has preliminarily determined that this proposed rule can be categorically excluded under 6.03c.3(i) of NAO 216–6. The provisions of the rule are administrative in nature and facilitate monitoring of all high seas fishing vessels. The requirements for the installation of VMS EMTUs on vessels, the carrying of observers, and the prior notice and reporting of transshipments on the high seas would facilitate monitoring of vessels and would not have any impacts on the human environment. Moreover, the proposed rule also includes procedures that incorporate reviews under ESA and NEPA prior to any authorization of activities on the high seas.

*Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The current collection of information, under OMB Control No. 0648–0304, includes a permit application, vessel marking requirements, and high seas fishing effort and catch reporting. In addition to this collection of information, the proposed rule includes new requirements listed below.

The public reporting burden for each proposed requirement has been estimated, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information per response. The estimates are as follows:

- Inclusion of a vessel photograph in the permit application: 30 minutes.
- Request for a fishery to be authorized on the high seas: 110 hours.
- EMTU purchase and installation: 4 hour for purchase, installation, and activation of the EMTU and submittal of the installation and activation report.
- Position reports: Automatically sent by the EMTU.
- Notices of EMTU power-down and power-up: 10 minutes each.
- Prior notice for high seas transshipments: 15 minutes.
- Transshipment reporting: 1 hour.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Mark Wildman, Office for International Affairs and Seafood Inspection at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*50 CFR Part 300*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

*50 CFR Part 600*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

*50 CFR Part 660*

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

*50 CFR Part 665*

Accountability measures, Annual catch limits, Fisheries, Fishing, Western and central Pacific.

Dated: April 8, 2015.

**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 300, 600, 660 and 665 are proposed to be amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

**Authority:** 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

## Subpart B—[Removed and Reserved]

■ 2. Remove and reserve subpart B, consisting of § 300.10 through 300.17.

■ 3. Add subpart Q to read as follows:

### Subpart Q—High Seas Fisheries

Sec.



## Subpart Q—High Seas Fisheries

**Authority:** 16 U.S.C. 5501 *et seq.*

### § 300.330 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas and to ensure that such vessels do not operate in contravention of international conservation and management measures recognized by the United States.

### § 300.331 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in section 300.2, the Act, or the Agreement, the definition in this section shall apply.

*Bottom fishing* means fishing using gear that is likely to contact the seafloor during the normal course of fishing operations.

*Enhanced mobile transceiver unit (EMTU)* is defined in § 600.1500 of this chapter.

*High seas* means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

*High seas fishing permit* means a permit issued under this subpart.

*High seas fishing vessel* means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources and as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation. Support vessels include vessels that process or transship fish on the high seas; provide supplies, personnel or fuel on the high seas to other fishing vessels; or conduct other activities in support of, or in preparation for fishing.

*International conservation and management measures* means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

*Observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract with a third party, or certified as an observer by NMFS.

*Office Director* means the director of the NMFS Office for International Affairs and Seafood Inspection.

*Regional Administrator* means any one of the Directors of a NMFS regional office, defined under § 300.2.

*Transship* or *transshipment* means offloading or receiving or otherwise transferring fish or fish products from one fishing vessel to another. Excluded from this definition is net sharing, which means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

*Vessel monitoring system (VMS)* is defined in § 600.1500 of this title.

### § 300.332 Issuing offices.

Any Regional Administrator or the Office Director may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Administrator or the Office Director, applicants are encouraged to submit their applications (with envelopes marked ''Attn: HSFCA Permits'') to the Regional Administrator or the Office Director with whom they normally interact on fisheries matters.

### § 300.333 Vessel permits.

(a) *Eligibility.* (1) Any vessel owner or operator of a high seas fishing vessel is eligible to receive a permit for a fishery authorized on the high seas under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator or Office Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures have no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if it is determined by the Regional Administrator or Office Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Applicability.* Any high seas fishing vessel used for fishing, as defined under § 300.2, on the high seas must have on board a valid permit issued under this subpart.

(c) *Application.* Permit application forms are available from the NMFS Web site or from any Regional Administrator or the Office Director. Failure to submit a complete and accurate application, along with all other required documentation and the specified fee will preclude issuance of a permit. To apply for a permit under this subpart, the owner or operator of a high seas fishing vessel must submit the following to a Regional Administrator or Office Director:

(1) A complete, accurate application form signed by the vessel owner or operator.

(2) Information required under this section and § 300.334(a).

(3) A color photograph showing an entire bow-to-stern side-view of the vessel in its current form and appearance. The photograph must clearly and legibly display the vessel name and identification markings. If the vessel's form or appearance materially changes (such as the vessel is painted another color, the vessel's identification markings change, or the vessel undergoes a structural modification) the vessel owner and operator must submit a new photograph of the vessel within 15 days of the change.

(4) For vessels with state registration instead of U.S. Coast Guard documentation, the applicant must supply additional vessel information that NMFS may request.

(5) The fee specified in the application form. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit. NMFS charges this fee to recover the administrative expenses of permit issuance, and the amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook.

(d) *Permit issuance and validity.* (1) Except as provided for in subpart D of 15 CFR part 904, and subject to paragraphs (a), (c), and (d)(2) and (3), the Regional Administrator or Office Director will issue a permit, which will include applicable conditions or restrictions, within 15 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Administrator or Office Director will not issue a permit unless an EMTU has been installed and activated on the vessel in accordance with § 300.337(c)(2).

(3) The Regional Administrator or Office Director will not issue a permit unless the applicant holds a valid permit for the subject vessel for U.S. domestic fisheries related to the authorized high seas fishery.

(4) Except as otherwise provided, permits issued under this subpart are valid for 5 years from the date of issuance. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or state registration must be kept current. A permit issued under this subpart is void when the vessel owner or the name of the vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(5) A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(e) *Display.* A valid permit, or a copy thereof, issued under this subpart must be on board any high seas fishing vessel while operating on the high seas and available for inspection by an authorized officer.

(f) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported in writing to the Regional Administrator or Office Director who issued the permit within 15 days of such changes.

(g) *Renewal.* Application for renewal of a permit prior to its expiration is the responsibility of the permit holder and may be completed per § 300.333(c). The Regional Administrator or Office Director will not consider a permit renewal application to be complete until the permit holder satisfies all required fishing activity report requirements under the permit and § 300.342. The Regional Administrator or Office Director will not issue a renewed permit unless an EMTU has been activated on the vessel in accordance with § 300.337(c)(2) and the applicant holds a valid permit for the subject vessel for U.S. domestic fisheries related to the authorized high seas fishery.

(h) *Marine mammals and ESA-listed species.* Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to take marine mammals or ESA-listed species. No marine mammals or ESA-listed species may be taken in the course of fishing operations unless the taking is allowed under the Marine Mammal Protection Act or the Endangered Species Act (ESA), pursuant to regulations, an authorization, or permit granted by NMFS or the U.S. Fish and Wildlife Service.

(i) *Permit status changes.* NMFS may modify, suspend, or revoke a permit issued under this subpart if permitted activities may impact living marine resources in ways that were not foreseen or anticipated at the time of permit issuance; are in contravention of an international conservation and management measure; or violate any applicable law. NMFS will notify an affected permit holder of any change in permit status by contacting the permit holder at the address of record provided on the permit application or as updated pursuant to paragraph (f) of this subsection.

**§ 300.334 Fisheries authorized on the high seas.**

(a) When applying for a permit under § 300.333, the owner or operator of a high seas fishing vessel must identify in the application the authorized fisheries in which he or she intends to fish. More than one authorized fishery may be selected. The following fisheries are authorized on the high seas:

(1) 50 CFR part 300, Subpart C—Eastern Pacific Tuna Fisheries

(2) 50 CFR part 300, Subpart D—South Pacific Tuna Fisheries

(3) 50 CFR part 300, Subpart G—Antarctic Marine Living Resources

(4) 50 CFR part 635—Atlantic Highly Migratory Species Fisheries

(5) 50 CFR part 660, Subpart K—U.S. West Coast Fisheries for Highly Migratory Species

(6) 50 CFR part 665, Subpart F—Western Pacific Pelagic Fisheries

(7) South Pacific Albacore Troll Fishery

(8) Northwest Atlantic Fishery

(b) For each of the authorized fisheries specified on the high seas fishing permit, the owner or operator of the high seas fishing vessel must:

(1) Abide by the regulations, set forth in other parts of this chapter and Chapter VI, governing those authorized fisheries while operating on the high seas;

(2) Obtain and renew any appropriate permits or authorizations; and

(3) Notify the Regional Administrator or Office Director who issued the permit immediately in the event that a species listed as threatened or endangered under the ESA is taken incidental to the fishing activities without authorization under a relevant incidental take statement.

(c) *Change in authorized fisheries.* If a high seas fishing permit holder elects to change the authorized fisheries specified on the permit, he or she shall notify the Regional Administrator or Office Director who issued the permit of the change(s) and shall obtain the underlying permits for the authorized fisheries prior to engaging in the fishery on the high seas. Per the process under § 300.333(d), the Regional Administrator or Office Director will then issue a revised high seas fishing permit which will expire 5 years from the original effective date.

(d) *Revision of authorized fisheries list.* Through rulemaking, NMFS will add a fishery to, or delete a fishery from, the list in paragraph (a) of this section. NMFS may add or delete fisheries from the list after completing any analyses required under the Endangered Species Act, Marine Mammal Protection Act, National Environmental Policy Act, and

other applicable laws. In taking such action, NMFS, in consultation with the relevant Regional Fishery Management Council(s) where appropriate, will consider, among other things, whether:

(1) The proposed fishing activities would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or species listed as threatened or endangered under the Endangered Species Act;

(2) The proposed fishing activities would be inconsistent with relevant fishery management plans and their implementing regulations or other applicable law;

(3) Insufficient mechanisms exist to effectively monitor the activities of vessels engaged in the proposed fishing activities; or

(4) The proposed fishing activities would contravene international conservation and management measures recognized by the United States.

(e) *Request for revision of authorized fisheries list.* A person may submit a written request to the Office Director to add a fishery to or delete a fishery from the list. A request to delete a fishery from the list of authorized fisheries must include the name of the fishery; information that addresses considerations under paragraph (d) of this section; and, if requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws. A request to add a fishery to the list of authorized fisheries must include the following information:

(1) The species (target and incidental) expected to be harvested and the anticipated amounts of such harvest and bycatch;

(2) The approximate times and places when fishing is expected to take place, the number and type of vessels expected to participate, and the type, size, and amount of gear expected to be used;

(3) A description of the specific area that may be affected by the fishing activities;

(4) A description of any anticipated impacts on the environment, including impacts on fisheries, marine mammals, and species listed as threatened or endangered under the ESA or their critical habitat;

(5) Other information that addresses considerations under paragraph (d); and

(6) If requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws.

(7) Once all required information is received to proceed with consideration of a request, NMFS will publish in the **Federal Register** a proposed rule, noting receipt of the request to add an authorized fishery, and inviting information and comments. Relevant information received during the comment period may be considered by NMFS and, where appropriate, the relevant Regional Fishery Management Council(s) to analyze potential environmental impacts of the fisheries and develop any conditions or restrictions. Based on its analysis, considerations under paragraph (d) of this section, and other relevant considerations, NMFS would publish its decision on the request in the **Federal Register**.

(f) *Deletion of a fishery from the authorized fisheries list.* NMFS will delete (*i.e.,* deauthorize) a fishery under paragraph (d) or (e) of this section through publication of a final rule. NMFS will also provide notice to affected permit holders by email at the address provided to NMFS in the high seas permit application and by Registered Mail. When a fishery is deleted from the list, any activities on the high seas related to that fishery are prohibited as of the effective date of the final rule. In addition, the high seas permit will be voided unless the permit holder notifies NMFS that he or she elects to change to another authorized high seas fishery or continue in any other authorized fisheries noted on the permit. Once the applicant so notifies NMFS and, if necessary, secures any underlying permits necessary for participation in another authorized high seas fishery, the Regional Administrator or Office Director will then issue a revised high seas fishing permit per the process under § 300.333(d). The revised permit will expire 5 years from the original effective date.

### § 300.335 Bottom fishing.

(a) Bottom fishing may be permitted on the high seas when authorized by international conservation and management measures recognized by the United States. For bottom fishing activity not subject to international conservation measures recognized by the United States, a person who seeks to engage in such fishing must request authorization of a new high seas fishery as described in § 300.334(e), then if the fishery is authorized, must obtain all applicable permits including a high seas fishing permit issued under § 300.333. NMFS may specify conditions in the permit to mitigate adverse impacts on VMEs, which may include the types of conditions that have been adopted in relevant RFMO measures recognized by the United States.

(b) *Permit.* To be permitted under this section, the owner or operator of a high seas fishing vessel must follow the procedures under § 300.334(e), or if he or she seeks to change an existing permit, must follow the procedures under § 300.334(c).

### § 300.336 Vessel identification.

(a) *General.* A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking.* Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its international radio call sign (IRCS), or, if not assigned an IRCS, must be marked (in order of priority) with its Federal, state, or other documentation number appearing on its high seas fishing permit and, if a WCPFC Area Endorsement has been issued for the vessel under § 300.212, that documentation number must be preceded by the characters ''USA'' and a hyphen (that is, ''USA-'');

(ii) The markings must be displayed at all times on the vessel's side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: For vessels 25 meters (m) and over in length overall, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length overall, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length overall, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length overall, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length overall, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length overall, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be h/6;

(ix) The space between letters and/or numbers must not exceed h/4 nor be less than h/6;

(x) The space between adjacent letters having sloping sides must not exceed h/8 nor be less than h/10;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than h/6; and

(xiii) The marks and the background must be maintained in good condition at all times.

**§ 300.337 Requirements for Enhanced Mobile Transceiver Units (EMTUs).**

(a) *Vessel position information.* The owner or operator of a vessel issued a permit under this subpart, or for which such permit is required, must have installed on board the vessel a NMFS type-approved enhanced mobile transceiver unit (EMTU). The operator or owner of the vessel must ensure that the EMTU is operational and properly reporting positions to NMFS as required by this section, except when exempt under paragraph (d)(1) or (d)(2) of this section. If the vessel is also subject to EMTU requirements in other parts of this title, the more restrictive requirements apply.

(b) *Contact information and business hours.* With respect to the requirements in this section, vessel owners and operators should consult with the divisional office of the NOAA Office of Law Enforcement (OLE) in, or nearest, the Region issuing the permit under this subpart. The OLE VMS Helpdesk in OLE headquarters office may also be contacted.

(c) *EMTU installation and activation*—(1) *EMTU installation.* The vessel owner or operator shall obtain and have installed on the fishing vessel, by a qualified marine electrician and in accordance with any instructions provided by the VMS Helpdesk or OLE divisional office, a NMFS type-approved EMTU. The vessel owner and operator shall authorize NMFS to receive and relay transmissions from the EMTU. The vessel owner and operator shall arrange for a type-approved mobile communications service to receive and transmit position reports and email communications from the EMTU to NMFS. NMFS makes available lists of type-approved EMTUs and mobile communications service providers. Vessel owners must ensure that the EMTU and communications service hardware purchased is type-approved for all fisheries and regions in which their vessel will be operating.

(2) *EMTU activation.* When an EMTU is installed or reinstalled or the mobile communications service provider changes, or if directed by NMFS, the vessel owner and operator shall prior to leaving port:

(i) Turn on the EMTU to make it operational;

(ii) Submit a VMS Installation and Activation Certification form, or an activation report as directed by OLE, to the OLE divisional office within or nearest to the region issuing the permit under this subpart; and

(iii) Receive verbal or written confirmation from NMFS that transmissions are being received properly from the EMTU.

(d) *EMTU operation.* Unless otherwise provided below, and subject to more restrictive requirements where applicable, the vessel owner or operator shall continuously operate the EMTU so that it provides to NMFS position information automatically transmitted, every hour or as directed by OLE.

(1) In-port exemption: The EMTU may be powered down when the vessel will remain at a dock or permanent mooring for more than 72 consecutive hours and after the notice required in paragraph (d)(3) of this section is submitted. When powering up the EMTU after the in-port exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section at least 2 hours before leaving port or mooring.

(2) Long-term exemption: The EMTU may be powered down if the vessel will not operate on the high seas or in any fishery that requires EMTU operation for more than 30 consecutive days and after the notice required in paragraph (d)(3) of this section is submitted. When powering up the EMTU from the long-term exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section.

(3) Prior to each power-down of the EMTU, under paragraph (d)(1) or (2) of this section, the vessel owner or operator must report to the OLE divisional office during business hours, via email or other means as directed by OLE: The vessel's name; the vessel's official number; the intent to power down the EMTU; the reason for power-down; the port where the vessel is docked or area where it will be operating; and the full name, telephone, and email contact information for the vessel owner or operator.

(4) When powering up the EMTU, the vessel owner or operator must report to the OLE divisional office during business hours, via email or other means as directed by OLE: The fact that the EMTU has been powered up; the vessel's name; the vessel's official number; port name; intended fishery; and full name, telephone, and email contact information for the vessel owner or operator.

(5) If the EMTU is powered up after a long-term or in-port exemption, the vessel owner must receive email confirmation from the OLE divisional office that EMTU transmissions are being received properly before leaving port, entering the high seas, or entering a fishery that requires EMTU operation.

(e) *Failure of EMTU.* If the vessel owner or operator becomes aware that the EMTU has become inoperable or that transmission of automatic position reports from the EMTU has been interrupted, or if notified by NMFS or the U.S. Coast Guard that automatic position reports are not being received from the EMTU or that an inspection of the EMTU has revealed a problem with the performance of the EMTU, the vessel owner or operator shall comply with the following requirements:

(1) If the vessel is at port, the vessel owner or operator shall repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section before the vessel leaves port.

(2) If the vessel is at sea, the vessel owner, operator, or designee shall contact the OLE divisional office by telephone or email at the earliest opportunity during business hours and identify the caller, vessel name, vessel location, and the type of fishing permit(s). The vessel operator shall follow the instructions provided by the OLE divisional office, which could include: Ceasing fishing, stowing fishing gear, returning to port, or submitting periodic position reports at specified intervals by other means. The vessel owner or operator must repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section within 30 days or before the vessel leaves port, whichever is sooner.

(f) *Related VMS requirements.* Unless specified otherwise in the high seas fishing permit, a vessel owner's and operator's compliance with requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs will satisfy the requirements of this section, if the requirements are the same or more restrictive than those in this section and provided that:

(1) On the high seas, the EMTU is operated continuously and position

information is automatically transmitted every hour;

(2) The EMTU is type-approved by NMFS;

(3) The vessel owner or operator has authorized NMFS to receive and relay transmissions from the EMTU; and

(4) The requirements of paragraph (d) of this section are complied with. If the EMTU is owned by NMFS, the requirement under paragraph (e) of this section to repair or replace the EMTU will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the EMTU complies with the requirements specified in paragraph (c)(2) of this section before the vessel leaves port.

(g) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation, operation, and maintenance of the EMTU and for all charges levied by vendors as necessary to ensure the transmission of automatic position reports to NMFS as required in paragraph (c) of this section. However, if the EMTU is being carried and operated in compliance with the requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs, the vessel owner and operator shall not be responsible for any costs that are the responsibility of NMFS under those regulations.

(h) *Tampering.* The vessel owner and operator shall ensure that the EMTU is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(i) *Inspection.* The vessel owner and operator shall make the EMTU, including its antenna, connectors and antenna cable, available for inspection by authorized officers or by officers conducting boarding and inspection under a scheme adopted by an RFMO of which the United States is a member.

(j) *Access to data.* As required under fishery-specific regulations in other parts of this title, the vessel owner and operator shall make the vessel's position data, obtained from the EMTU or other means, available to authorized officers and to any inspector conducting a high seas boarding and inspection pursuant to a scheme adopted by an RFMO of which the United States is a member.

(k) *Communication devices.* (1) In cases of EMTU failure as specified under paragraph (e) of this section, and to facilitate communication with management and enforcement authorities regarding the functioning of the EMTU and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device, in addition to the EMTU, that is capable of real-time communication with the OLE divisional office.

### § 300.338 Observers.

(a) Where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures, NMFS may select for at-sea observer coverage any vessel that has been issued a high seas fishing permit. A vessel so selected by NMFS must carry an observer when directed to do so.

(b) NMFS will contact a vessel owner, in writing, when his or her vessel is selected for observer coverage under this section.

(c) A vessel shall not fish on the high seas without taking an observer if NMFS contacted the vessel owner under paragraph (b) of this section, or if so required as a condition of a permit issued under this subpart or pursuant to other legal authorities, unless the requirement to carry an observer has been waived under paragraph (d) of this section.

(d) The vessel owner that NMFS contacts under paragraph (b) of this section must notify NMFS of his or her next fishing trip that may take place on the high seas before commencing the fishing trip. NMFS will specify the notification procedures and information requirements, such as expected gear deployment, trip duration and fishing area, in its selection letter. Once notified of a trip by the vessel owner, NMFS will assign an observer for that trip or notify the vessel owner that coverage pursuant to this subpart is not required, given the existing requirement for observer coverage under other legal authorities.

(e) The owner, operator, and crew of a vessel on which a NMFS-approved observer is assigned must comply with safety regulations at §§ 600.725 and 600.746 of this title and—

(1) Facilitate the safe embarkation and debarkation of the observer.

(2) Provide the observer with accommodations, food, and amenities that are equivalent of those provided to vessel officers.

(3) Allow the observer access to all areas of the vessel necessary to conduct observer duties.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer access to EMTUs, communications equipment, and navigation equipment to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(6) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and disposition of fish for that trip.

(7) Provide accurate vessel locations by latitude and longitude upon request by the observer.

(8) Provide access to sea turtle, marine mammal, sea bird, or other specimens as requested by the observer.

(9) Notify the observer in a timely fashion when commercial fishing activity is to begin and end.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties.

(g) The permit holder, vessel operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator or Office Director imposes by written notice.

### § 300.339 Transshipment on the high seas.

(a) In addition to any other applicable restrictions on transshipment, including those under parts 300 and 635 of this title, the following requirements apply to transshipments taking place on the high seas:

(1) The owner or operator of a U.S. vessel receiving or offloading fish on the high seas shall provide a notice by fax or email to the Regional Administrator or the Office Director at least 36 hours prior to any intended transshipment on the high seas with the following information: The vessels offloading and receiving the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment; date and time that transshipment is expected to occur; and species, processed state, and quantities (in metric tons) expected to be transshipped. If another requirement for prior notice applies, the more restrictive requirement (*i.e.* a requirement for greater advance notice and/or more specific information regarding vessels, location etc.) must be followed.

(2) U.S. high seas fishing vessels shall report transshipments on the high seas to the Regional Administrator or Office Director within 15 calendar days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director. If there are applicable transshipment reporting requirements in other parts of this title, the more restrictive requirement (*e.g.,* a reporting requirement of fewer than 15 calendar days) must be followed.

(b) [Reserved]

**§ 300.340 Prohibitions.**

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Fish on the high seas unless the vessel has been issued, and has on board, a valid permit issued under § 300.333(d).

(c) Fish on the high seas unless the vessel has been issued, and has on board, valid permits related to the authorized fisheries noted on the high seas fishing permit, as required under § 300.334(b).

(d) Operate a high seas fishing vessel on the high seas that is not marked in accordance with § 300.336.

(e) With respect to the EMTU,

(1) Fail to install, activate, or continuously operate a properly functioning and type-approved EMTU as required in § 300.337;

(2) Power-down or power-up the EMTU without following the procedures required in § 300.337;

(3) In the event of EMTU failure or interruption, fail to repair or replace an EMTU, fail to notify the appropriate OLE divisional office and follow the instructions provided, or otherwise fail to act as required in § 300.337;

(4) Disable, destroy, damage or operate improperly an EMTU installed under § 300.337, attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.337;

(5) Fail to make an EMTU installed under § 300.337 or the position data obtained from it available for inspection, as provided in § 300.337; or

(6) Fail to carry on board and monitor communication devices as required in § 300.337(l);

(f) With respect to observers,

(1) Fail to provide to an observer, a NMFS employee, or a designated observer provider, information that has been requested pursuant to § 300.338 or § 600.746 of this title, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 300.338 or § 600.746 of this title;

(2) Fish without an observer when the vessel is required to carry an observer pursuant to § 300.338(c);

(3) Assault, oppose, impede, intimidate, or interfere with an observer;

(4) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(5) Tamper with or destroy samples or equipment.

(g) Fail to submit a prior notice or a report of a transshipment as provided in § 300.339(b) of this title.

(h) Fail to comply with reporting requirements as provided in § 300.341.

**§ 300.341 Reporting.**

(a) *General.* The operator of any vessel permitted under this subpart must accurately maintain on board the vessel a complete record of fishing activities, such as catch, effort, and other data and report high seas catch and effort information to NMFS in a manner consistent with the reporting requirements of the authorized fishery(ies) noted on the high seas permit. Reports must include: Identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles, marine mammals, or birds.

(1) The vessel owner and operator are responsible for obtaining and completing the reporting forms from the Regional Administrator or Office Director who issued the permit holder's high seas fishing permit. The completed forms must be submitted to the same Regional Administrator or Office Director or, if directed by NMFS, to a Science Center.

(2) Reports must be submitted within the deadline provided for in the authorized fishery or within 15 days following the end of a fishing trip, whichever is sooner. Contact information for the Regional Administrators and Science Center Directors can be found on the NMFS Web site.

(b) [Reserved].

## PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 4. 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.*

■ 5. In § 600.705, add paragraph (g) to read as follows:

**§ 600.705 Relation to other laws.**

* * * * *

(g) *High seas fishing activities.* Regulations governing permits and requirements for fishing activities on the high seas are set forth in 50 CFR part 300, subparts A and Q. Any vessel operating on the high seas must obtain a permit issued pursuant to the High Seas Fishing Compliance Act.

■ 5. In § 600.745, revise the first two sentences in paragraph (a) to read as follows:

**§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.**

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ or on the high seas are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. * * *

* * * * *

## PART 660—FISHERIES OFF WEST COAST STATES

■ 6. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 7. In § 660.2, add paragraph (c) to read as follows:

**§ 660.2 Relation to other laws.**

* * * * *

(c) Fishing activities on the high seas are governed by regulations of the High Seas Fishing Compliance Act set forth in 50 CFR part 300, subparts A and Q.

**§ 660.708 [Amended]**

■ 8. In § 660.708, remove paragraph (a)(1)(iii) and redesignate paragraph (a)(1)(iv) as paragraph (a)(1)(iii).

## PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 9. The authority citation for part 665 continues to read as follows:

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

■ 10. In § 665.1, revise paragraph (b) to read as follows:

**§ 665.1 Purpose and scope.**

* * * * *

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in 50 CFR parts 300 and 600.

* * * * *

[FR Doc. 2015–08425 Filed 4–10–15; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 80, No. 70
Monday, April 13, 2015

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

### Rural Housing Service

### Notice of Intent To Accept Applications To Be an Intermediary Under the Loan Application Packaging Pilot Program Within the Section 502 Direct Single Family Housing Program

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In Fiscal Year (FY) 2010, the Agency undertook a pilot program to evaluate how the loan application packaging process could be improved for the Section 502 Direct Single Family Housing program, which is authorized in Title V, Section 1480 (k) of the Housing Act. This pilot program introduced the use of intermediaries in the packaging process. Intermediaries reach out to other nonprofits to serve as loan application packagers, ensure those packagers are qualified and trained, perform quality assurance reviews to prevent the submission of incomplete or ineligible loan application packages to the Agency, and serve as a liaison between the Agency and the packager.

Through this notice, the Agency will accept applications to be an intermediary under the pilot program. Approval will be subject to fully meeting the conditions outlined within this notice, sanctioning by the Single Family Housing Direct Loan Division following an application review (which will include input from the applicable Rural Development State Office), and signoff by the Rural Housing Service Administrator.

**DATES:** Eligible parties interested in serving as a new intermediary under this pilot must submit the requested items to the Single Family Housing Direct Loan Division by May 13, 2015.

**ADDRESSES:** Submissions may be sent electronically to *SFHDIRECTPROGRAM@wdc.usda.gov* or by mail to Brooke Baumann, Branch Chief, Single Family Housing Direct Loan Division, USDA Rural Development, 1400 Independence Avenue SW., Room 2211, Washington, DC 20250–0783.

**FOR FURTHER INFORMATION CONTACT:** Brooke Baumann, Branch Chief, Single Family Housing Direct Loan Division, USDA Rural Development, Stop 0783, 1400 Independence Avenue SW., Washington, DC 20250–0783, Telephone: 202–690–4250. Email: *brooke.baumann@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** As noted in the summary, intermediaries reach out to other nonprofits to serve as loan application packagers, ensure those packagers are qualified and trained, perform quality assurance reviews to prevent the submission of incomplete or ineligible loan application packages to the Agency, and serve as a liaison between the Agency and the packager.

Each pilot intermediary signs a Memorandum of Understanding (MOU) with the Agency, which details the roles and responsibilities of all parties.

- Under the pilot program, the intermediary and/or nonprofit packager may charge the borrower a loan application packaging fee not to exceed $1,500 to be paid at closing; the Agency does not dictate how or whether the intermediary and packager split the fee. Pursuant to Agency regulations at 7 CFR 3550.52(d)(6), program funds may be used to pay the packaging fee, provided that this does not cause the loan to exceed the maximum allowable loan amount and the borrower has repayment ability for the fee. The maximum allowable loan amount is normally limited to 100 percent of market value (7 CFR 3550.63(b)) as determined by an appraisal.
- Under the pilot program, if the maximum packaging fee cannot be included in the Section 502 Direct Loan, the intermediary and/or packager shall seek a seller concession to cover the fee; assist the applicant in seeking funds from outside sources to cover the fee; provided that those sources take the form of a soft, silent or forgivable subordinate affordable housing product; and/or reduce the fee to an amount that can be included in the Section 502 Direct Loan or paid using a seller concession or outside sources of funds. In no event will the borrower or the Agency be responsible for paying the packaging fee to the extent that the maximum fee cannot be paid at closing using one of these options. It is understood by all parties that a packaging fee may be charged only for closed loans.

On December 16, 2014, President Barack Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2015 (Act), Public Law 113–235, which provides fiscal year (FY) 2015 full-year appropriations through September 30, 2015, for all agencies except the Department of Homeland Security. Sec. 729 of the Act provides that the Agency will continue agreements with the current intermediaries in the pilot program [1] and enter into additional agreements that increase the number of pilot intermediaries to at least 10.

Sec. 729 applies only to the pilot program in FY 2015; it does not concern any rulemaking process. This notice solicits applications for intermediaries in the pilot program only, and does not guarantee an intermediary's role or status when their pilot program MOU expires [2] or when the final rule for the certified loan application packaging process proposed in the **Federal Register** on August 23, 2013 (78 FR 52460) becomes effective, whichever is earlier. Through this notice, five new intermediaries are sought.

To qualify and apply to be a new intermediary under the pilot, an interested party must submit documentation demonstrating that it meets all of the following conditions:

- Be a nonprofit organization or other public agency.
- Be tax exempt under the Internal Revenue Code and be engaged in affordable housing in accordance with their regulations, articles of incorporation, or bylaws.
- Have at least five years of verifiable experience with the Agency's direct single family housing loan programs.
- Develop quality control procedures designed to prevent submission of incomplete or ineligible application

[1] The existing five intermediaries in the pilot program are Federation of Appalachian Housing Enterprises, NeighborWorks Dakota Home Resources, Northeast South Dakota Community Action Program, Rural Community Assistance Corporation, and Texas Community Capital.

[2] The current MOUs expire upon December 31, 2015, or the effective date of the final rule for the certified loan application packaging process, whichever is earlier. The current pilot intermediaries are not guaranteed an intermediary role beyond their participation in the pilot program.

packages to the Agency. This condition will require a detailed outline of the interested party's intended procedures.

• Have the capacity to serve as an intermediary in one or more of the following states not currently served under the existing pilot program: Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virgin Islands, Washington, and Wisconsin. (Applications that propose covering any of the following states will be automatically removed from consideration since the existing intermediaries are tasked with serving all or part of these states: Alabama, Arizona, California, Colorado, Hawaii, Indiana, Kentucky, Michigan, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.) This condition will require a detailed outline of the interested party's action plan and experience. The outline should include, but is not limited to: What state or states the party wishes to cover, how they are well-equipped to handle the proposed coverage area, how they intend on creating affiliations with eligible nonprofit packagers, confirmation that they will not serve dual roles (*i.e.*, the intermediary and the packager's employer must have different tax identification numbers and cannot have the same board of directors) unless they intend on operating under the program's general provisions for some packages which means the packaging fee cannot exceed $750, their ability to target very-low income persons in rural areas interested in homeownership, and their ability to target underserved areas.

• Ensure that their quality assurance staff completes an Agency-approved loan application packaging course and successfully pass the corresponding test.

• Not be the developer, builder, seller of, or have any other such financial interest in, the property for which the application package is submitted.

• Acknowledge qualifying as an intermediary for the pilot does not imply any guaranteed qualification under the certified loan application packaging process final rule once effective.

The above conditions generally mimic those outlined in the proposed rule to create a certified loan application packaging process.

If selected as a new intermediary, a MOU between the intermediary and the Agency must be signed. The MOU will detail the roles and responsibilities of all parties; and will be in effect through September 30, 2015, or up until the effective date of the final rule on the certified loan application packaging process, whichever should occur first. This notice should not be construed as containing all those roles and responsibilities.

**Non-Discrimination Statement**

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html* or at any USDA Office, or call (866) 632–9992 to request the form. Send your completed complaint form or letter by mail to: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250; by fax at (202) 690–7442; or, by email at: *program.intake@usda.gov.* Individuals who are deaf, hard of hearing or have speech disabilities and who wish to file a program complaint should please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish). USDA is an equal opportunity provider and employer. The full ''Non-Discrimination Statement'' is found at: *http://www.usda.gov.wps/portal/usda/usdahome?navtype=Non_Discrimination.*

Dated: April 1, 2015.

**Tony Hernandez,**

*Administrator, Rural Housing Service.*

[FR Doc. 2015–08351 Filed 4–10–15; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### Proposed Information Collection; Comment Request; Services Surveys: BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

**AGENCY:** Bureau of Economic Analysis, 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before June 12, 2015.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230, or via email at *jjesup@doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Request for additional information or copies of the information collection instrument and instructions should be directed to Christopher Stein, Chief, Services Surveys Branch BE–50 (SSB), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9850; fax: (202) 606–5318; or via email at *christopher.stein@bea.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45) is a survey that collects data on U.S. trade in insurance services. The information collected on this survey will be used to formulate U.S. international economic policy and analyze the impact of that policy, and the policies of foreign countries, on international trade in services. The data are used in estimating the insurance component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

The Bureau of Economic Analysis (BEA) is proposing no additions, modifications, or deletions to the current BE–45 survey. The effort to keep current reporting requirements unchanged is intended to minimize

respondent burden while considering the needs of data users. Existing language in the instructions and definitions will be reviewed and adjusted as necessary to clarify survey requirements.

**II. Method of Collection**

Form BE–45 is a quarterly report that must be filed within 60 days after the end of each calendar quarter, or within 90 days after the close of the calendar year, and is mandatory for each U.S. insurance company whose covered transactions with foreign persons for any of the data items on the survey exceeded $8 million (positive or negative) in the prior calendar year, or are expected to exceed that amount during the current calendar year.

BEA offers its electronic filing option, the eFile system, for use in reporting on Form BE–45. For more information about eFile, go to *www.bea.gov/efile.*

**III. Data**

*OMB Control Number:* 0608–0066.

*Form Number:* BE–45.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 2,000 annually (500 filed each quarter; 475 reporting mandatory or voluntary data, and 25 that would not report data).

*Estimated Time Per Response:* 8 hours is the average for those reporting data and 1 hour is the average for those not reporting data, but hours may vary considerably among respondents because of differences in company size and complexity.

*Estimated Total Annual Burden Hours:* 15,300.

*Estimated Total Annual Cost to Public:* $612,000.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

**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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 7, 2015.

**Glenna Mickelson,**

*Management Analyst, Office of Chief Information Officer.*

[FR Doc. 2015–08314 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[3/28/2015 through 4/7/2015]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Clear Automation, LLC ..... | 85 Robert Porter Road, Southington, CT 06489. | 4/7/2015 | The firm manufactures system integrated automation robotic equipment. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 7, 2015.

**Michael S. DeVillo,**

*Eligibility Examiner.*

[FR Doc. 2015–08370 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1969]**

### Expansion of Subzone 116B; Total Petrochemicals & Refining USA, Inc., Port Arthur and Jefferson County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite

and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

*Whereas*, the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 116, has made application to the Board to expand Subzone 116B on behalf of Total Petrochemicals & Refining USA, Inc., to include as Site 5 a pipeline that extends from the subzone's Site 4 in Nederland to Site 1 in Port Arthur, Texas (FTZ Docket B–85–2014, docketed 11–25–2014);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (79 FR 71831, 12–02–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore*, the Board hereby approves the expansion of Subzone 116B on behalf of Total Petrochemicals & Refining USA, Inc., as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 3rd day of April 2015.

**Paul Piquado,**

*Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

ATTEST:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015–08456 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1975]**

### Expansion of Foreign-Trade Zone 106 Under Alternative Site Framework Oklahoma City, Oklahoma

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas,* the Port Authority of Greater Oklahoma City, grantee of Foreign-Trade Zone 106, submitted an application to the Board (FTZ Docket B–57–2014, docketed 08–12–2014) for authority to expand the zone under the ASF to include a new magnet site (proposed Site 18) in Shawnee, Oklahoma, adjacent to the Oklahoma City Customs and Border Protection port of entry;

*Whereas,* notice inviting public comment was given in the **Federal Register** (79 FR 48117, 08–15–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore,* the Board hereby orders:

The application to expand FTZ 106 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 18 if not activated within the initial seven years from the month of approval.

Signed at Washington, DC this 3rd day of April 2015.

**Paul Piquado,**

*Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

**ATTEST: Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015–08457 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1968]**

### Expansion of Foreign-Trade Zone 174 Under Alternative Site Framework, Tucson, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas*, Tucson Regional Economic Opportunities, grantee of Foreign-Trade Zone 174, has applied to the Board (FTZ Docket B–35–2011, docketed 05/23/2011, amended 05/21/2014) for authority to expand FTZ 174 under the ASF to include additional magnet sites, adjacent to the Tucson, Arizona U.S. Customs and Border Protection port of entry;

*Whereas*, notice inviting public comment was given in the **Federal Register** (76 FR 30907, 05/27/2011 and 79 FR 31297, 06/02/2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, in part;

*Now, Therefore*, the Board hereby orders:

The application to reorganize FTZ 174 under the ASF is approved as it pertains to the Red Rock Industrial Park (designated as Site 8) and the Sunshine Industrial Park (designated as Site 9), subject to the FTZ Act and the Board's regulations, including section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 8 and Site 9 if not activated within five years from the month of approval.

Signed at Washington, DC this 3rd day of April 2015.

**Paul Piquado,**

*Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2015–08444 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–805]**

### Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 9, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe

from Mexico.[1] The Department issued post-preliminary results of this administrative review on January 30, 2015 (Post-Preliminary Results).[2] Also, as a result of our partial rescission of this review, as discussed in the Preliminary Results, Productos Laminados, S.A. de C.V. (Productos Laminados) is the sole remaining respondent.[3] [4] The period of review (POR) is November 1, 2012, through October 31, 2013.

Only one party submitted a case brief. No interested party submitted rebuttal briefs. Based on our analysis of the comment received, we made no changes to the margin calculations. Therefore, the final results of review do not differ from the Post-Preliminary Results. The final dumping margin is listed in the section below entitled, ''Final Results of Review.''

**DATES:** *Effective Date:* April 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Davina Friedmann or Robert James, AD/CVD Operations, Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0698 and (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 9, 2014, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico for the period November 1, 2012, through October 31, 2013.[5]

During this administrative review, the Department also conducted a concurrent scope review. As indicated in the final scope ruling, the Department found that certain black, circular tubing produced to ASTM A–513 by Productos Laminados meets the exclusion language for mechanical tubing in the scope of this antidumping duty order. Pursuant to the final scope ruling, the Department instructed Productos Laminados to submit a revised U.S. sales database incorporating the factors set forth in the scope ruling. Productos Laminados submitted its revised U.S. sales database on January 5, 2014. Consequently, on January 30, 2015, the Department issued the Post-Preliminary Results. The Department also placed on the record of this review the following memorandum: ''Productos Laminados de Monterrey S.A. de C.V. and Prolamsa, Inc.—Analysis Memorandum for the Post-Preliminary Results of the 2012/2013 Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from Mexico'', dated January 30, 2015 (Post-Preliminary Analysis Memo). Together, these memoranda explain the changes made to the Preliminary Results, yielding the revised margin for the post-preliminary results of review.

In response to the Department's invitation to comment on the preliminary and post-preliminary results of this review, one party, Prolamsa, filed a case brief on February 9, 2015. No rebuttal briefs were submitted to the Department.

## Scope of the Order

The products covered by the order are circular welded non-alloy steel pipes and tubes. The merchandise covered by the order and subject to this review is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Circular Welded Non-Alloy Steel Pipe from Mexico; 2012–2013'' (Issues and Decision Memorandum), which is hereby adopted by this notice and incorporated herein by reference. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[6] ACCESS is available to registered users at *https://access.trade.gov* and available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

## Analysis of Comments Received

All issues raised by interested parties in this administrative review are listed as an attachment to this notice. We have analyzed all interested party comments. Based on our analysis of the comments received, the margin in the final results is unchanged from that presented in the Post-Preliminary Results.

## Final Results of Review

We determine the following weighted-average margin exists for the period November 1, 2012, through October 31, 2013:

| Manufacturer/Exporter | Weighted-average margin (percent) |
|---|---|
| Productos Laminados ..... | 7.33 |

## Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the

[1] *See Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 73034 (December 9, 2014) (Preliminary Results).

[2] *See* ''Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from Mexico: Post-Preliminary Results Decision Memorandum,'' dated January 30, 2015.

[3] *See* Preliminary Results.

[4] The Department initiated an administrative review of both Productos Laminados and Prolamsa, Inc. separately. However, record information indicates that Prolamsa, Inc. is a wholly-owned U.S. subsidiary of Productos Laminados, and is an importer, not a producer, of subject merchandise. Also, during the course of this review, Productos Laminados submitted consolidated responses on behalf of itself and Prolamsa, Inc. For purposes of this **Federal Register** notice, references to Prolamsa pertain to Productos Laminados and Prolamsa, Inc. collectively. Otherwise, the two entities are referenced separately, where appropriate.

[5] *See* Preliminary Results.

[6] On November 24, 2014, Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA Access'') changed to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location also changed from *http://iaaccess.rade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

publication date of these final results of administrative review, consistent with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for Productos Laminados will be equal to the weighted-average dumping margin established in the final results of this review, which is listed above; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate established from a completed segment of this proceeding for the most recent review period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.62 percent, the all-others rate established in the LTFV investigation.[7] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[7] *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico,* 57 FR 42953 (September 17, 1992).

Dated: April 8, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*



[FR Doc. 2015–08430 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–844]**

### Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012–2013

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 7, 2014, the Department of Commerce (the Department) published the *Preliminary Results* of the third administrative review of the antidumping duty (AD) order on narrow woven ribbons with woven selvedge (NWR) from Taiwan.[1] The review covers two producers/exporters of the subject merchandise: King Young Enterprise Co., Ltd. and its affiliates, Ethel Enterprise Co., Ltd. and Glory Young Enterprise Co., Ltd., (collectively, King Young); and Hen Hao Trading Co. Ltd. a.k.a. Taiwan Tulip Ribbons and Braids Co. Ltd. (Hen Hao). The period of review (POR) is September 1, 2012, through August 31, 2013. We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments, we continue to find that sales of subject merchandise to the United States have been made at prices below normal value (NV). The final dumping margins for the reviewed companies are listed below in the section entitled ''Final Results of the Review.''

**DATES:** *Effective date:* April 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** David Crespo or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693 and (202) 482–4682, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 7, 2014, the Department published the *Preliminary Results* in the **Federal Register.** The Department conducted a sales verification of King Young at its offices in Taiwan from September 29 through October 3, 2014, and a cost verification from November 12 through 16, 2014. In January 2015, we received case briefs from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (the petitioner), King Young, and Morex Ribbon Corp. and Papillon Ribbon & Bow Inc., importers of subject merchandise. Also in January 2015, we received rebuttal briefs from the petitioner and King Young. On January 15, 2015, the Department postponed the final results by 60 days.[2] The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order**

The merchandise subject to this order[3] covers narrow woven ribbons with woven selvedge. The merchandise subject to this order is classifiable under the harmonized tariff schedule of the United States (HTSUS) statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by this order is dispositive.[4]

[1] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 60449 (October 7, 2014) (*Preliminary Results*).

[2] *See* the January 15, 2015, memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through Irene Darzenta Tzafolias, Acting Director, Office II from David Crespo, Senior International Trade Compliance Analyst, entitled ''Narrow Woven Ribbons with Woven Selvedge from Taiwan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review.''

[3] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (Sept. 17, 2010) (*Order*).

[4] For a complete description of the scope of the order, see the memorandum from James P. Maeder, Senior Director, Office I, Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for

Continued

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty (CVD) Centralized Electronic Service System (ACCESS).[5] ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we made changes to the margin calculations for King Young. For further discussion, see the Issues and Decision Memorandum. We made no changes to the rate assigned as adverse facts available (AFA) to Hen Hao in these final results.

**Period of Review**

The POR is September 1, 2012, through August 31, 2013.

**Final Results of the Review**

We are assigning the following dumping margins to the firms listed below:

| Producer/exporter | Dumping margin (percent) |
|---|---|
| King Young Enterprise Co., Ltd./ | |
| Glory Young Enterprise Co., Ltd./ | |
| Ethel Enterprise Co., Ltd. Taiwan | 30.64 |
| Hen Hao Trading Co. Ltd. a.k.a. Taiwan | |
| Tulip Ribbons and Braids Co. Ltd. | 137.20 |

**Disclosure and Public Comment**

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise and deposits of estimated duties, where applicable, in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

For King Young, the Department will calculate importer-specific assessment rates equal to the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales. Where an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department will instruct CBP to liquidate these entries without regard to antidumping duties pursuant to 19 CFR 351.106(c)(2).

For Hen Hao's U.S. sales, we will base the assessment rate assigned to the corresponding entries on the AFA rate listed above.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for Hen Hao and King Young will be equal to the dumping margins 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; 3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate determined in the LTFV investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Order**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: April 6, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix I**

**List of Topics Discussed in the Issues and Decision Memorandum**

1. Summary
2. Background
3. Margin Calculations
4. Scope of the Order
5. Discussion of the Issues

Enforcement and Compliance, entitled, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review on Narrow Woven Ribbons with Woven Selvedge from Taiwan (Issues and Decision Memorandum), dated concurrently with and hereby adopted by this notice.

[5] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (IA ACCESS) to AD and CVD Centralized Electronic Service System (ACCESS). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references in the Department's regulations can be found at 79 FR 69046 (November 20, 2014).

[6] *See Order,* 75 FR 56985.

a. The Appropriate Unit of Measure On Which to Base Sales and Cost Data for King Young
b. Limiting the Model Matching Methodology for Width and Length
c. Allegation That King Young's Piece Sales Are Outside the Ordinary Course of Trade
d. Allegation That King Young's Channel 3 Sales Are Outside the Ordinary Course of Trade
e. Level of Trade for King Young
f. Clerical Error in King Young's Preliminary Dumping Margin
g. King Young's Unaffiliated Suppliers' Cost of Production
h. General and Administrative Expense Ratio for King Young
i. Financial Expenses for King Young
j. Labor and Overhead Ratios for King Young
k. King Young's Allocation of Fixed Overhead Costs
l. AFA Rate for Hen Hao
6. Recommendation

[FR Doc. 2015–08436 Filed 4–10–15; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–844]**

### Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) completed the administrative review of the countervailing duty (CVD) order on certain lined paper products from India for the January 1, 2012, through December 31, 2012, period of review (POR) [1] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The respondent in this administrative review is A.R. Printing & Packaging India Private Limited (AR Printing).[2] In these final results, the Department made changes to the subsidy rate determined for AR Printing. Our analysis of comments received is contained in the Decision Memorandum accompanying this **Federal Register** notice.[3] The final net subsidy rate for AR Printing is listed below in the ''Final Results of Review'' section.

**DATES:** *Effective Date:* April 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1009.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 28, 2006, the Department published in the **Federal Register** the CVD order on certain lined paper products from India.[4] On October 7, 2014, the Department published the *Preliminary Results* of administrative review of the *Lined Paper Order* for the POR.[5]

After the *Preliminary Results,* we issued a third supplemental questionnaire providing the Government of India (GOI) with an opportunity to describe the steps on which it based its claims that AR Printing did not use certain subsidy programs at issue in the review,[6] to which the GOI responded on October 31, 2014.[7] On March 4, 2015, we conducted verification at the GOI offices in New Delhi, India.[8]

Petitioner [9] submitted a case brief on March 11, 2015,[10] and the GOI submitted a rebuttal brief on March 16, 2015.[11] No interested party requested a hearing.

#### Scope of the Order

The merchandise subject to the order is certain lined paper products. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Countervailing Duty (CVD) Administrative Review: Certain Lined Paper Products from India.'' The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

#### Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[13]

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[1] The Department published its preliminary results for this administrative review in *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012,* 79 FR 60447 (October 7, 2014) (*Preliminary Results*), and accompanying Issues and Decision Memorandum, dated September 30, 2014 (Preliminary Decision Memorandum).

[2] AR Printing is also known as A.R. Printing & Packaging (India) Pvt. Ltd.

[3] *See* ''Decision Memorandum for the Final Results of Countervailing Duty Review: Certain Lined Paper Products from India'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance (Decision Memorandum), dated concurrently and hereby adopted by this notice.

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China: Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Order*).

[5] *See Preliminary Results.*

[6] *See* the Department's October 10, 2014, Third Supplemental Questionnaire to the GOI.

[7] *See* the GOI's October 31, 2014, Third Supplemental Questionnaire Response.

[8] *See* Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Duty Operations, Office III, ''Verification of the Questionnaire Responses Submitted by the Government of India,'' (March 4, 2015).

[9] Petitioner is the Association of American School Paper Suppliers (Petitioner).

[10] *See* Petitioner' March 11, 2015, case brief.

[11] *See* the GOI's March 16, 2015, rebuttal brief.

[12] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[13] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E)

Continued

In making these findings, we relied, in part, on facts otherwise available on the administrative record because AR Printing: (1) Failed to respond to the Department's requests for necessary information and therefore necessary information was not on the record; (2) withheld requested information; (3) failed to provide requested information by the established deadlines; and (4) significantly impeded this proceeding. *See* sections 776(a)(1) and (2)(A)–(C) of the Act. Furthermore, because we determine that AR Printing failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, we drew an adverse inference in selecting from among the facts otherwise available. *See* section 776(b) of the Act.

**Changes Since Preliminary Results**

After the *Preliminary Results,* the Department verified information from the GOI concerning the Market Development Assistance, Status Certificate, and Market Access Initiative programs.[14] Based on the findings at verification and for the reasons set forth in the Decision Memorandum, we find that AR Printing did not use these three programs during the POR. Therefore, we did not include subsidy rates for these programs when determining the AFA attributable to AR Printing.

For a full description of the analysis concerning the Status Certificate, Market Access Initiative, and Market Development programs, *see* the Issues and Decision Memorandum, which also incorporates by reference our analysis from the *Preliminary Results* pertaining to other programs for which the Department's analysis and determinations have not changed. For all other issues, *see* the Preliminary Decision Memorandum.

**Final Results of Review**

In accordance with 19 CFR 351.221(b)(5), we calculated the listed net subsidy rate for 2012:

| Company | Net subsidy rate |
|---|---|
| A.R. Printing & Packaging India Pvt. Ltd. (AR Printing). | 37.43 percent *ad valorem*. |

of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[14] *See* Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Duty Operations, Office III, ''Verification of the Questionnaire Responses Submitted by the Government of India,'' (March 4, 2015) (GOI Verification Report).

**Assessment Rates**

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results of review, to liquidate shipments of subject merchandise produced and/or exported by AR Printing, entered, or withdrawn from warehouse, for consumption on or after January 1, 2012, through December 31, 2012, at the *ad valorem* rate listed above.

**Cash Deposit Instructions**

The Department intends to instruct CBP to collect cash deposits of estimated CVDs in the amount shown above for AR Printing on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated CVDs at the most recent company-specific or all-others rate applicable to the company. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Administrative Protective Order**

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return 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 these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 6, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix**



[FR Doc. 2015–08423 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* West Coast Region Vessel Identification Requirements.

*OMB Control Number:* 0648-0355.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 1,125.

*Average Hours Per Response:* 45 minutes.

*Burden Hours:* 169.

*Needs and Uses:* This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing (or other activity) to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances

at sea and in the air. Law enforcement personnel rely on vessel marking information to assure compliance with fisheries management regulations. Vessels that qualify for particular fisheries are also readily identified, and this allows for more cost-effective enforcement. Cooperating fishermen also use the vessel numbers to report suspicious or non-compliant activities that they observe in unauthorized areas. The identifying number on fishing vessels is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Every 5 years.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 7, 2015.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2015–08353 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD131**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Block Island Transmission System

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

**ACTION:** Notice; proposed revised incidental harassment authorization; request for comments.

**SUMMARY:** NMFS received a joint request from Deepwater Wind Block Island Transmission, LLC (DWBIT) and the Narragansett Electric Company (a subsidiary of National Grid USA), doing business as National Grid (TNEC), to transfer from DWBIT to TNEC, a Marine Mammal Protection Act (MMPA) one-year Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction of the Block Island Transmission System (BITS), following the sale of the BITS from DWBIT to TNEC. No other changes are proposed. NMFS is inviting comments on the proposed transfer of the BITS IHA from DWBIT to TNEC.

**DATES:** Comments and information must be received no later than May 13, 2015.

**ADDRESSES:** Comments on the proposed revised IHA should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.fiorentino@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. NMFS is not responsible for comments sent to addresses other than those provided here.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental/* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of DWBIT's original IHA application and current IHA for the BITS may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/*. NMFS prepared an Environmental Assessment and Finding of No Significant Impact on the issuance of the BITS IHA on August 21, 2014 which are available at the same internet address.

**FOR FURTHER INFORMATION CONTACT:** John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8477.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

#### Summary of Request

On August 22, 2014, NMFS issued an IHA to DWBIT to take marine mammals, by Level B harassment, incidental to construction of the BITS, effective from November 1, 2014 through October 31, 2015 (79 FR 51314). On January 30, 2015, DWBIT sold the BITS, in its entirety, to TNEC. The BITS, a bi-directional submarine transmission cable, will interconnect Block Island to TNEC's existing distribution system in Narragansett, Rhode Island. To date, no construction has occurred.

DWBIT and TNEC subsequently submitted a written request to transfer the current IHA from DWBIT to TNEC. With the transfer of the BITS IHA, TNEC agrees to comply with the associated terms, conditions, stipulations, and restrictions of the original BITS IHA. No other changes were requested. The revised IHA, if issued, would remain effective from November 1, 2014, through October 31, 2015.

This **Federal Register** notice sets forth only a proposed change in the BITS IHA holder's name. There are no other changes to the current IHA as described in the August 28, 2014, **Federal Register** notice of a final IHA (79 FR 51314): the specified activity; description of marine mammals in the area of the specified activity; potential effects on marine mammals and their habitat; mitigation and related monitoring used to implement mitigation; reporting; estimated take by incidental harassment; negligible impact and small numbers analyses and determinations; impact on availability of affected species or stocks for subsistence uses and the period of effectiveness remain unchanged and are herein incorporated by reference.

#### Proposed Revision to BITS IHA

NMFS is proposing a change in the name of the holder of the BITS IHA from ''Deepwater Wind Block Island

Transmission, LLC, 56 Exchange Terrace, Suite 101, Providence, Rhode Island, 02903'' to ''The Narragansett Electric Company, d/b/a National Grid, 40 Sylvan Road, Waltham, Massachusetts, 02451.''

**Request for Public Comments**

NMFS invites comment on the proposed revised IHA. Please include with your comments any supporting data or literature citations to help inform our final decision on DWBIT and TNEC's request for transfer of the BITS MMPA authorization.

Dated: April 8, 2015.

**Wanda L. Cain,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2015–08461 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* West Coast Region, Gear Identification Requirements.

*OMB Control Number:* 0648–0352.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 685.

*Average Hours per Response:* 15 minutes.

*Burden Hours:* 574.

*Needs and Uses:* This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The regulations specify that fishing gear must be marked with the vessel's official number, Federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked (*e.g.,* location and color). Law enforcement personnel rely on gear marking information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. Gear violations are more readily prosecuted when the gear is marked, and this allows for more cost-effective enforcement. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear are not illegally placed. Cooperating fishermen also use the gear marking numbers to report suspicious or non-compliant activities that they observe, and to report placement or occurrence of gear in unauthorized areas. The identifying number on fishing gear is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Every five years.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 7, 2015.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2015–08352 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Technical Information Service

### National Technical Information Service Advisory Board

**AGENCY:** National Technical Information Service.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces the next meeting of the National Technical Information Service Advisory Board (the Advisory Board), which advises the Secretary of Commerce and the Director of the National Technical Information Service (NTIS) on policies and operations of the Service.

**DATES:** The Advisory Board will meet on Friday, April 24, 2015 from 10:00 a.m. to approximately 2:30 p.m.

**ADDRESSES:** The Advisory Board will be held in Room 116 of the NTIS Facility at 5301 Shawnee Road, Alexandria, Virginia 22312. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce Borzino, (703) 605–6405, *bborzino@ntis.gov.*

**SUPPLEMENTARY INFORMATION:** The NTIS Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The meeting will focus on a review of NTIS performance and accomplishments in the first half of Fiscal Year 2015. A final agenda and summary of the proceedings will be posted at NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.aspx*).

The NTIS Facility is a secure one. Accordingly persons wishing to attend should call the NTIS Visitors Center, (703) 605–6040, to arrange for admission no later than Monday, April 20, 2015. If there are sufficient expressions of interest, up to one-half hour will be reserved for public comments during the session. Questions from the public will not be considered by the Board but any person who wishes to submit a written question for the Board's consideration should mail or email it to the NTIS Visitor Center, *bookstore@ntis.gov,* not later than Monday, April 20, 2015.

Dated: April 7, 2015.

**Bruce Borzino,**

*Director.*

[FR Doc. 2015–08390 Filed 4–10–15; 8:45 am]

**BILLING CODE 3510–04–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2015–OS–0033]**

### Proposed Collection; Comment Request

**AGENCY:** Department of Defense, Office of the General Counsel/Defense Legal Services Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department of Defense, Office of the General Counsel/Defense Legal Services Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by June 12, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of Defense, Office of the General Counsel/Defense Legal Services Agency, 1600 Defense Pentagon, ATTN: Standard of Conduct Office, Washington, DC or email: *OSD.SOCO@MAIL.MIL.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Office of the Secretary of Defense Confidential Conflict-of-Interest Statement for Office of the Secretary of Defense Advisory Committee Members SD Form X682; OMB Control Number 0704–XXXX.

*Needs and Uses:* The information requested on this form is required by Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674, and 5 CFR part 2634, subpart I, of the Office of Government Ethics regulations. The requested information is necessary to prevent conflicts of interest and to identify potential conflicts of individuals serving on certain Office of the Secretary of Defense (OSD) Advisory Committees.

*Affected Public:* Individuals serving on certain OSD Federal Advisory Committees.

*Annual Burden Hours:* 125 hours

*Number of Respondents:* 125 respondents

*Responses Per Respondent:* 1 per respondent

*Annual Responses:* 125 responses

*Average Burden Per Response:* 1 hour

*Frequency:* Annually

Respondents are members of or potential members of Office of the Secretary of Defense Advisory Committees. Draft form X682 will assist in identifying potential conflicts of interest due to personal financial interests or affiliations. The collection of requested information on the form will satisfy a Federal regulatory requirement and assist the Department of Defense comply with applicable Federal conflict of interest laws and regulations.

Dated: April 7, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–08315 Filed 4–10–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2014–OS–0152]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by May 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Federal Post Card Application (FPCA), Standard Form 76 (SF–76); OMB Control Number 0704–0503.

*Type of Request:* Existing Collection in use without an OMB Control Number

*Number of Respondents:* 1,200,000

*Responses per Respondent:* 1

*Annual Responses:* 1,200,000

*Average Burden per Response:* 15 minutes

*Annual Burden Hours:* 300,000

*Needs and Uses:* The information collection requirement is necessary to fulfill the requirement of the Uniformed and Overseas Absentee Voting Act (UOCAVA), 46 U.S.C. 1973ff wherein the Secretary of Defense is to prescribe an official postcard form, containing an absentee voter registration application and an absentee ballot request application for use by the States. The Department of Defense, Under Secretary of Defense (Personnel and Readiness), Federal Voting Assistance Program, revised the SF 76, Federal Post Card Application and SF 76A, Federal Post Card Application (Electronic) to comply with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: April 7, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–08303 Filed 4–10–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2014–OS–0151]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by May 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form aND OMB Number:* Federal Write-In Absentee Ballot (FWAB), Standard Form 186 (SF–186); OMB Control Number 0704–0502.

*Type of Request:* Existing Collection in use without an OMB Control Number

*Number of Respondents:* 1,200,000

*Responses Per Respondent:* 1

*Annual Responses:* 1,200,000

*Average Burden Per Response:* 15 minutes

*Annual Burden Hours:* 300,000

*Needs and Uses:* The information collection requirement is necessary to fulfill the requirement of the Uniformed and Overseas Absentee Voting Act (UOCAVA), 46 U.S.C. 1973ff wherein the Secretary of Defense is to prescribe the Federal write-in absentee ballot for absent uniformed service voters and overseas voters in general elections for Federal office. The Department of Defense, Under Secretary of Defense (Personnel and Readiness), Federal Voting Assistance Program, revised the SF 186, Federal Write-In Absentee Ballot and SF 186A, Federal Write-In Absentee Ballot (Electronic) to comply with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: April 7, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2015–08302 Filed 4–10–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Service Contract Inventory for Fiscal Year (FY) 2014

**AGENCY:** Office of the Chief Financial Officer, Department of Education.

**ACTION:** Notice of availability—FY 2014 Service Contract Inventory.

**SUMMARY:** Through this notice, the Secretary announces the availability of the Department of Education's service contract inventory on its Web site, at *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventory appendix/servicecontract inventory.html.* A service contract inventory is a tool for assisting an agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

**FOR FURTHER INFORMATION CONTACT:** Pier Connors, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 by phone at 202–245–6919 or email at *Pier.Connors@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 743 of Division C of the Consolidated Appropriations Act of 2010, Pub. L. 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) by December 31, 2014. In addition, section 743 requires these agencies, which include the Department of Education, to (1) make the inventory available to the public, and (2) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and email address of an agency point of contact.

Through this notice, the Department announces the availability of its inventory on the following Web site: *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventory appendix/servicecontract inventory.html.* The point of contact for the inventory is provided under the **FOR FURTHER INFORMATION CONTACT** section in this notice.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, or audiotape) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you

can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Program Authority:** Section 743 of Division C of the Consolidated Appropriations Act of 2010, Pub. L. 111–117.

Dated: April 8, 2015.

**Thomas P. Skelly,**

*Director of Budget Service, delegated the authority to perform the functions and duties of the Chief Financial Officer.*

[FR Doc. 2015–08410 Filed 4–10–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Impact Aid Discretionary Construction Grant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

#### Overview Information

Impact Aid Discretionary Construction Grant Program Notice inviting applications for new awards for fiscal year (FY) 2015.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.041C.

**DATES:**

*Applications Available:* April 13, 2015.

*Deadline for Transmittal of Applications:* June 30, 2015.

*Deadline for Intergovernmental Review:* August 29, 2015.

#### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The Impact Aid Discretionary Construction Grant program provides grants for emergency repairs and modernization of school facilities to certain local educational agencies (LEAs) that receive Impact Aid formula funds.

*Priorities:* In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), these priorities are from section 8007(b)(2)(A) and (B) of the Elementary and Secondary Education Act of 1965, as amended (Act) (20 U.S.C. 7707(b)), and the regulations for this program in 34 CFR 222.177–179.

*Absolute Priorities:* For FY 2015, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities and otherwise follow the applicable funding provisions in 34 CFR 222.189.

These priorities are:

*Priority 1—Emergency Repair Grants.*

An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act (20 U.S.C. 7707(a));

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act (20 U.S.C. 7707(b)(2)); and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

*Priority 2—Emergency Repair Grants.*

An LEA is eligible to apply for an emergency grant under the second priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;

(b)(1) Enrolls federally connected children living on Indian lands equal to at least 40 percent of the total number of children in average daily attendance (ADA) in its schools; or

(2) Enrolls federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(c) Has used at least 75 percent of its bond limit;

(d) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(e) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

Additionally, an LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the other criteria described in paragraphs (a) and (b) may apply under Priority 2 on behalf of a school located within its geographic boundaries if—

(a) The school—

(1) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The school has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel;

(c) The LEA has used at least 75 percent of its bond limit; and

(d) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

**Program Authority:** 20 U.S.C. 7707(b).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 34 CFR 75.600 through 75.617), 77, 79, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 222.

#### II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $17,400,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $60,000–$6,000,000.

*Estimated Average Size of Awards:* $1,800,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months. We will determine each project period based on the nature of the project proposed and the time needed to complete it. We will specify this period in the grant award document.

#### III. Eligibility Information

1. *Eligible Applicants:* An LEA may qualify for an emergency grant under Priority 1 or Priority 2.

(a) Consistent with the requirements of section 8007(b)(3)(A) of the Act, an

LEA is eligible to receive an emergency grant under Priority 1 if it—

(1) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act (20 U.S.C. 7707(a)) because it enrolls a high percentage (at least 50 percent) of federally connected children in average daily attendance (ADA) who either reside on Indian lands or who have a parent on active duty in the U.S. uniformed services.

(2)(i) Has no practical capacity to issue bonds (as defined in 34 CFR 222.176);

(ii) Has minimal capacity to issue bonds (as defined in 34 CFR 222.176) and has used at least 75 percent of its bond limit; or

(iii) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act (20 U.S.C. 7703(b)(2)); and

(3) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(b)(1) Consistent with the requirements of section 8007(b)(3)(C) or (D) of the Act, an LEA is eligible to receive an emergency grant under Priority 2 if it—

(i) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act (20 U.S.C. 7703(b));

(ii)(A) Enrolls federally connected children living on Indian lands equal to at least 40 percent of the total number of children in ADA in its schools; or

(B) Enrolls federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(iii) Has used at least 75 percent of its bond limit;

(iv) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(v) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(2) Additionally, an LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the criteria above may apply under Priority 2 on behalf of a school located within its geographic boundaries if—

(i) The school—

(A) Enrolls children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(B) Enrolls children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(ii) The school has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel;

(iii) The LEA has used at least 75 percent of its bond limit; and

(iv) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

2. a. *Cost Sharing or Matching:* In reviewing proposed awards, the Secretary considers the funds available to the grantee from other sources, including local, State, and other Federal funds. See 20 U.S.C. 7707(b)(5)(A)(iii) and 34 CFR 222.174 and 222.191 through 222.193. Consistent with 34 CFR 222.192, an applicant will be required to submit the applicant's most recently available audited financial reports for three consecutive fiscal years, showing closing balances for all school funds. If significant balances (as detailed in 34 CFR 222.192) are available at the close of the applicant's FY 2013, or its most recently audited year, that are not obligated for other purposes, those funds will be considered available for the proposed emergency repair project. Available balances may reduce the amount of funds that may be awarded or eliminate the applicant's eligibility for an emergency grant award under this competition.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. As outlined in 34 CFR 222.174, grant funds under this competition may not be used to supplant or replace other available non-Federal construction money.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an electronic application via the Internet at: *www.G5.gov.* For assistance, please contact Amanda Ognibene, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C127, Washington, DC 20202–6244. Telephone: (202) 453–6637, FAX: (866) 799–1273, or by email: *Amanda.Ognibene@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under **FOR FURTHER INFORMATION CONTACT** in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

*Applications Available:* April 13, 2015.

*Deadline for Transmittal of Applications:* June 30, 2015.

Applications for grants under this competition must be submitted electronically using G5, the Department's grant management system, accessible through the Department's G5 site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider any application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 29, 2015.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Except for applicants with no practical capacity to issue bonds, as defined in 34 CFR 222.176, an eligible applicant's award amount may not be more than 50 percent of the total cost of an approved project and the total amount of grant funds may not exceed $4 million during any four-year period. See 34 CFR 222.193. For example, an LEA that is awarded $4 million in the first year may not receive any additional funds for the following three years. Applicants may submit only one application for one educational facility as provided by 34 CFR 222.183. If an applicant submits

more than one application, the Department will consider only the first submission, as determined by the G5 e-application system. Grant recipients must, in accordance with Federal, State, and local laws, use emergency grants for permissible construction activities at public elementary and secondary school facilities. The scope of the project for a selected facility will be identified as part of the final grant award conditions. A grantee must also ensure that its construction expenditures under this program meet the requirements of 34 CFR 222.172 (allowable program activities) and 34 CFR 222.173 (prohibited activities).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www.ed.gov/fund/grant/apply/sam-faqs.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Impact Aid Discretionary Construction Grant Program, CFDA number 84.041C, must be submitted electronically using the G5 system, accessible through the Department's G5 site at: *www.G5.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not email an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by midnight, Washington, DC time, on the application deadline date. G5 will not accept an application for this competition after 11:59:59 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Discretionary Construction Program under Section 8007(b) and all necessary signature pages.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- By the application deadline date, you must fax or email a signed copy of the cover page and the independent emergency certification form for the Application for Discretionary Construction Program under Section 8007(b) to the Impact Aid Program after following these steps:

(1) Print a copy of the application from G5 for your records.

(2) The applicant's Authorizing Representative must sign and date the cover page. The local certifying official must sign the certification for an emergency application. These forms must be submitted by the application deadline in order to be considered for funding under this program.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the Application for Discretionary Construction Program under Section 8007(b).

(4) Fax or email the signed cover page and independent emergency certification for the Discretionary Construction Program under Section 8007(b) to the Impact Aid Program at 1–866–799–1273 or by email to *Impact.Aid@ed.gov.* These forms must be submitted before midnight, Washington, DC time, of the application deadline in order to be considered for funding under this program.

• We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of G5 System Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because the G5 system is unavailable, we will grant you an extension until midnight, Washington, DC time, the following business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of the G5 system and you have initiated an electronic application for this competition; and

(2)(a) G5 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 11:00 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 11:00 p.m. and midnight, Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the G5 help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. Extensions referred to in this section apply only to the unavailability of the G5 system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the G5 system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to G5;

*and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Amanda Ognibene, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C127, Washington, DC 20202–6244. Telephone: 202–260–3858. FAX: 1–866–799–1273.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Impact Aid Program, Attention: (CFDA Number 84.041C), Room 3C127, 400 Maryland Avenue SW., Washington, DC 20202–6244.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Impact Aid Program, Attention: (CFDA Number 84.041C), Room 3C127, 400 Maryland Avenue SW., Washington, DC 20202–6244.

The Impact Aid Program accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope—if not provided by the Department—the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Impact Aid Program will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Impact Aid Program at (202) 260–3858.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are based on 20 U.S.C. 7707(b)(4) and (b)(6), as further clarified in 34 CFR 222.183 and 222.187, and are described in the following paragraphs. The Secretary gives distinct weight to the listed selection criteria. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally, unless otherwise specified. The maximum score that an application may receive is 100 points.

a. Need for project/severity of the school facility problem to be addressed by the proposed project (Maximum 30 points).

(i) Justification that the proposed project will address a valid emergency, and consistency of the emergency description and the proposed project with the certifying local official's statement (15 points).

(ii) Impact of the emergency condition on the health and safety of the building occupants or on program delivery.

Applicants should describe: The systems or areas of the facility involved (*e.g.,* HVAC, roof, floor, windows; the type of space affected, such as instructional, resource, food service, recreational, general support, or other areas); the percentage of building occupants affected by the emergency; and the importance of the facility or affected area to the instructional program (15 points).

b. Project urgency (Maximum 28 points).

(i) Risk to occupants if the facility condition is not addressed. Applicants should describe: Projected increased future costs; the anticipated effect of the proposed project on the useful life of the facility or the need for major construction; and the age and condition of the facility and date of last renovation of affected areas.

(ii) The justification for rebuilding, if proposed.

c. Effects of Federal presence (Maximum 30 points).

(i) Amount of non-taxable Federal property in the applicant LEA (percentage of Federal property divided by 10) (10 points).

(ii) The number of federally connected children identified in section 8003(a)(1)(A), (B), (C), and (D) of the Act in the LEA (percentage of identified children in LEA divided by 10) (10 points).

(iii) The number of federally connected children identified in section 8003(a)(1)(A), (B), (C), and (D) of the Act in the school facility (percentage of identified children in school facility divided by 10) (10 points).

d. Ability to respond or pay (Maximum 12 points).

(i) The percentage of its bonding capacity used by the LEA. Four points will be distributed based on this percentage so that an LEA that has used 100 percent of its bonding capacity receives all four points, and an LEA that has used less than 25 percent of its bond limit receives only one point. LEAs that do not have limits on bonded indebtedness established by their States will be evaluated by assuming that their bond limit is 10 percent of the assessed value of real property in the LEA. LEAs deemed to have no practical capacity to issue bonds will receive all four points (4 points).

(ii) Assessed value of real property per student (applicant LEA's total assessed valuation of real property per pupil as a percentile ranking of all LEAs in the State). Points will be distributed by providing all four points to LEAs in the State's poorest quartile and only one point to LEAs in the State's wealthiest quartile (4 points).

(iii) Total tax rate for capital or school purposes (applicant LEA's tax rate for capital or school purposes as a percentile ranking of all LEAs in the State). If the State authorizes a tax rate for capital expenditures, then these data must be used; otherwise, data on the total tax rate for school purposes are used. Points will be distributed by providing all four points to LEAs in the State's highest-taxing quartile and only one point to LEAs in the State's lowest-taxing quartile (4 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Upon receipt, Impact Aid program staff will screen all applications to eliminate any applications that do not meet the eligibility standards, are incomplete, or are late. Applications that do not include a signed cover page and a signed independent emergency certification submitted by fax or email before midnight, Washington, DC time on the application deadline are considered incomplete and will not be considered for funding. Program staff will also calculate the scores for each application under criteria (c) and (d). Panel reviewers will assess the applications under criteria (a) and (b).

(a) Applications are ranked based on the total number of points received during the review process. Those with the highest scores will be at the top of the funding slate.

(b) Applicants may submit only one application for one educational facility. If an applicant submits multiple applications, the Department will only consider the first sequentially submitted application, as provided under 34 CFR 222.183.

(c) For applicants that request funding for new construction and that are selected for funding, the Department will require a feasibility of construction study prior to making an award determination. This independent third-party study must demonstrate that the area upon which the construction will occur is suitable for construction and will be able to sustain the new facility or addition. This study should include information to show that the soil is stable, the site is suitable for construction, and the existing infrastructure can serve and sustain the new facility.

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent

performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following performance measure for this program: An increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate. Data for this measure will be reported to the Department on Table 10 of the application for Impact Aid Section 8003 Basic Support Payments.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Amanda Ognibene, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C127, Washington, DC 20202–6244. Telephone: 202–453–6637 or by email: *Amanda.Ognibene@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

**VIII. Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 8, 2015.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2015–08376 Filed 4–10–15; 8:45 am]

**BILLING CODE 4000–01–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Notice of Public Meeting for EAC Standards Board.

**DATE & TIME:** Tuesday, April 28, 2015, 9:00 a.m.–5:00 p.m. and Wednesday, April 29, 2015, 9:00 a.m.–2:00 p.m.

**PLACE:** The Williamsburg Woodlands Hotel, 105 Visitor Center Drive, Williamsburg, VA 23185, Phone: (757) 220–7960.

**PURPOSE:** The U.S. Election Assistance Commission (EAC) Standards Board, as required by the Help America Vote Act of 2002, will meet to organize and select an executive board following a suspension of activity. The Standards Board will present its views on issues in the administration of Federal elections, formulate recommendations to the EAC, and receive updates on EAC program activities. The Board will designate a Bylaws Committee, an EAC Executive Director Search Committee, and a Voting Systems Standards Committee. The Board will receive a briefing on the EAC Grants program. The Board will receive a briefing on the EAC Testing & Certification program with updates on the Voluntary Voting System Guidelines (VVSG 1.1). The Board will receive a briefing on the EAC Research Program. The Board will receive a briefing by the National Association of State Election Directors (NASED) Voting Systems Committee. The Board will receive a briefing on Disability Grants. The Board will receive a briefing by the Federal Voting Assistance Program (FVAP). The Board will receive a briefing on the activities of the EAC's Technical Guidelines Development Committee (TGDC). The Board will receive a status report on a State Testing & Certification Consortium. The Board will hear committee reports and consider other administrative matters.

**This Meeting Will Be Open to the Public**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener, Telephone: (301) 563–3961.

**Bryan Whitener,**

*Director of Communications and Clearinghouse, U.S. Election Assistance Commission.*

[FR Doc. 2015–08532 Filed 4–9–15; 4:15 pm]

**BILLING CODE 6820–KF–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Notice of Public Meeting for EAC Board of Advisors.

**DATE & TIME:** Tuesday, April 28, 2015, 9:00 a.m.–5:00 p.m. and Wednesday, April 29, 2015, 9:00 a.m.—2:00 p.m.

**PLACE:** The Williamsburg Woodlands Hotel, 105 Visitor Center Drive, Williamsburg, VA 23185, Phone: (757) 220–7960.

**PURPOSE:** The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002, will meet to organize and select officers following a suspension of activity. The board will present its views on issues in the administration of Federal elections, formulate recommendations to the EAC, and receive updates on EAC program activities. The Board will designate a Bylaws Committee, an EAC Executive Director Search Committee, and a Voting Systems Standards Committee. The Board will receive a briefing on the EAC Grants program. The Board will receive a briefing on the EAC Testing & Certification program with updates on the Voluntary Voting System Guidelines (VVSG 1.1). The Board will receive a briefing on the EAC Research Program. The Board will receive a briefing by the National Association of State Election Directors (NASED) Voting Systems Committee. The Board will receive a briefing on Disability Grants. The Board will receive a briefing by the Federal Voting Assistance Program (FVAP). The Board will receive a briefing on the activities of the EAC's Technical Guidelines Development Committee (TGDC). The Board will receive a status report on a State Testing & Certification Consortium. The Board will hear committee reports and consider other administrative matters.

**This Meeting Will Be Open to the Public**

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener, Telephone: (301) 563–3961.

**Bryan Whitener,**

*Director of Communications and Clearinghouse, U.S. Election Assistance Commission.*

[FR Doc. 2015–08531 Filed 4–9–15; 4:15 pm]

**BILLING CODE 6820–KF–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Meetings

**AGENCY:** Election Assistance Commission.

**DATE & TIME:** Wednesday, April 29, 2015 at 2:00 p.m.

**PLACE:** The Williamsburg Woodlands Hotel, 105 Visitor Center Drive, Williamsburg, VA 23185, Phone: (757) 220–7960.

**STATUS:** This meeting will be open to the public.

**ITEMS FOR DISCUSSION AND CONSIDERATION:**

- Consideration of Research Report: Urban/Rural Study
- Report of the EAC Standards Board
- Report of the EAC Board of Advisors
- Report of the EAC Transition Team

**AGENDA:** The Commission will receive a presentation on the DRAFT Urban/Rural Study Research Report, and consider the proposed document for approval. The Commission will receive a presentation on a report from the EAC Standards Board. The Commission will receive a presentation on a report from the EAC Board of Advisors. The Commission will receive a presentation on a report from the EAC Transition Team. The Commission will consider other administrative matters.

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener at (301) 563–3961.

Dated: April 9, 2015.

**Bryan Whitener,**

*Director of Communications & Clearinghouse.*

[FR Doc. 2015–08530 Filed 4–9–15; 4:15 pm]

**BILLING CODE 6820–KF–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–409]**

### Application to Export Electric Energy; Saracen Power LP

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of Application.

**SUMMARY:** Saracen Power LP (Applicant or Saracen Power) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or motions to intervene must be submitted on or before May 13, 2015.

**ADDRESSES:** Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. § 824a(e)).

On April 13, 2009, DOE issued Order No. EA–350 to Saracen Power LLC, which authorized Saracen Power to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. On December 16, 2009, DOE issued Order No. EA–350–A, which changed the name of Saracen Power LLP to Saracen Power LP. All other terms and conditions of Order No. EA–350 remained unchanged. On April 13, 2014, Saracen Power's authority to export electricity under EA–350–A expired. On February 26, 2015, Saracen Power filed an application with DOE for renewal of the export authority contained in Order No. EA–350–A for an additional five-year term. DOE will treat Saracen Power's Application as a new authorization request under OE Docket No. EA–409 due to the fact that the export authority contained in Order No. EA–350–A expired on April 13, 2014.

In its Application, Saracen Power reports that it ''has engaged in only one electricity export transaction since its authorization expired on April 13, 2014; specifically, Saracen Power transmitted 800 MWh to Canada over the Ontario-Michigan Interconnection facilities (Presidential Permit No. PP–230) on February 22, 2015.'' Application at 2. Since this export transaction, the Applicant has suspended further exports and ''is updating its internal compliance calendar and procedures to ensure that future reauthorizations are sought and obtained in a timely manner, to avoid future lapses of its electricity export authorization.'' Id.

In its application, the Applicant states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the Saracen Power's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–409. An additional copy is to be provided directly to both Allison P. Duensing, The Saracen Group of Companies, Five Greenway Plaza, Suite 1310, Houston, TX 77046 and to Daniel E. Frank, Sutherland Asbill & Brennan LLP, 700 Sixth Street NW., Suite 700, Washington, DC 20001.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on April 7, 2015.

**Brian Mills,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2015–08424 Filed 4–10–15; 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:* PR15–32–000.
*Applicants:* Minnesota Energy Resources Corporation.
*Description:* Submits tariff filing per 284.123(b)(1) + (g): Rates Update to be effective 4/1/2015; Filing Type: 1300.
*Filed Date:* 4/1/15.
*Accession Number:* 20150401–5304.
*Comments Due:* 5 p.m. ET 4/22/15.
284.123(g) Protests Due: 5 p.m. ET 6/1/15.

*Docket Numbers:* PR15–33–000.
*Applicants:* SourceGas Arkansas Inc.
*Description:* Submits tariff filing per 284.123(b)(2) + (g): Petition for Approval of Rates to be effective 4/2/2015; Filing Type: 1310.
*Filed Date:* 4/1/15.
*Accession Number:* 20150401–5426.
*Comments Due:* 5 p.m. ET 4/22/15.
284.123(g) Protests Due: 5 p.m. ET 6/1/15.

*Docket Numbers:* PR15–34–000.
*Applicants:* Bridgeline Holdings, L.P.
*Description:* Submits tariff filing per 284.123(b)(2) + (g): Section 311 Rate Case 4–1–15 to be effective 4/1/2015; Filing Type: 1310.
*Filed Date:* 4/1/15.
*Accession Number:* 20150401–5428.
*Comments Due:* 5 p.m. ET 4/22/15.
284.123(g) Protests Due: 5 p.m. ET 6/1/15.

*Docket Numbers:* RP15–848–000.
*Applicants:* ANR Pipeline Company.
*Description:* § 4(d) rate filing per 154.601: WEPC NNS Agmt to be effective 4/1/2015.
*Filed Date:* 4/2/15.
*Accession Number:* 20150402–5146.
*Comments Due:* 5 p.m. ET 4/14/15.

*Docket Numbers:* RP15–849–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) rate filing per 154.204: Neg Rate 2015–04–02 Encana to be effective 4/2/2015.
*Filed Date:* 4/2/15.
*Accession Number:* 20150402–5266.
*Comments Due:* 5 p.m. ET 4/14/15.

*Docket Numbers:* RP15–850–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Compliance filing per 154.203: Revised Compliance Filing to be effective 5/1/2015.
*Filed Date:* 4/2/15.
*Accession Number:* 20150402–5269.
*Comments Due:* 5 p.m. ET 4/14/15.

*Docket Numbers:* RP15–851–000.
*Applicants:* U.S. Energy Services, Inc.,World Fuel Services, Inc.
*Description:* Petition for Temporary Waivers of Capacity Release Regulations of World Fuel Services, Inc. and U.S. Energy Services, Inc., et al.
*Filed Date:* 4/2/15.
*Accession Number:* 20150402–5322.
*Comments Due:* 5 p.m. ET 4/14/15.

*Docket Numbers:* RP15–852–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) rate filing per 154.204: Neg Rate 2015–04–03 BP, ConocoPhillips to be effective 4/3/2015.
*Filed Date:* 4/3/15.
*Accession Number:* 20150403–5152.
*Comments Due:* 5 p.m. ET 4/15/15.

*Docket Numbers:* RP15–853–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* Informational Report of Negotiated Rate Agreements of El Paso Natural Gas Company, L.L.C.
*Filed Date:* 4/3/15.
*Accession Number:* 20150403–5163.
*Comments Due:* 5 p.m. ET 4/15/15.

*Docket Numbers:* RP15–854–000.
*Applicants:* First ECA Midstream LLC.
*Description:* § 4(d) rate filing per 154.204: Normal filing to be effective 11/29/2012.
*Filed Date:* 4/6/15.
*Accession Number:* 20150406–5059.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–856–000.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* Request for Waiver of East Tennessee Natural Gas, LLC.
*Filed Date:* 4/6/15.
*Accession Number:* 20150406–5211.
*Comments Due:* 5 p.m. ET 4/20/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP15–23–005.
*Applicants:* Transwestern Pipeline Company, LLC.
*Description:* Compliance filing per 154.203: RP15–23 Correct Compliance Filing to be effective 4/1/2015.
*Filed Date:* 4/2/15.
*Accession Number:* 20150402–5197.
*Comments Due:* 5 p.m. ET 4/14/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: April 7, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08399 Filed 4–10–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER15–1418–000]**

### Adelanto Solar 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 Adelanto Solar II, LLC's application for market-based rate authority, with an accompanying rate schedule, 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 April 27, 2015.

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(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site 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: April 7, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08401 Filed 4–10–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP15–719–000.
*Applicants:* Chandeleur Pipe Line, LLC.
*Description:* Compliance filing per 154.203: Chandeleur Pipe Line Order No. 801 compliance filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5024.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–720–000.
*Applicants:* Sabine Pipe Line LLC.
*Description:* Compliance filing per 154.203: Sabine Pipe Line Order No. 801 compliance filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5025.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–721–000.
*Applicants:* ANR Storage Company.
*Description:* § 4(d) rate filing per 154.601: Twin Eagle/BP Canada FS Agmts to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5027.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–722–000.
*Applicants:* Pine Needle LNG Company, LLC.
*Description:* Compliance filing per 154.203: Order No. 801 PN Map Removal to be effective 5/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5028.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–723–000.
*Applicants:* Horizon Pipeline Company, L.L.C.
*Description:* § 4(d) rate filing per 154.204: Natural's Negotiated Rate to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5029.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–724–000.
*Applicants:* Transwestern Pipeline Company, LLC.
*Description:* Compliance filing per 154.203: Map Filing in Compliance with Order No. 801 to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5030.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–725–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* § 4(d) rate filing per 154.204: Negoitated Rate—Occidental to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5031.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–726–000.
*Applicants:* MarkWest Pioneer, L.L.C.
*Description:* Compliance filing per 154.203: MarkWest Pioneer Order No. 801 Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5036.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–727–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) rate filing per 154.204: NegRate—Apr2015 Eclipse release to Sequent to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5045.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–728–000.
*Applicants:* Transcontinental Gas Pipe Line Company.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rates—Cherokee AGL—Replacement Shippers—Apr 2015 to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5078.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–729–000.
*Applicants:* Kinetica Energy Express, LLC.
*Description:* Compliance filing per 154.203: Map Filing in Compliance with Order 801 to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5207.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–730–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) rate filing per 154.204: NJRES 910531 4–1–2015 Negotiated Rate to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5215.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–731–000.
*Applicants:* East Cheyenne Gas Storage, LLC.
*Description:* Compliance filing per 154.203: ECGS Order No. 801 compliance filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5226.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–732–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* § 4(d) rate filing per 154.204: Tenaska Negotiated Rate to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5238.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–733–000.
*Applicants:* MarkWest New Mexico, L.L.C.
*Description:* Compliance filing per 154.203: MarkWest New Mexico Order No. 801 Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5262.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–734–000.
*Applicants:* KPC Pipeline, LLC.
*Description:* Compliance filing per 154.203: KPC Order No. 801 Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5330.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–735–000.
*Applicants:* Fayetteville Express Pipeline LLC.
*Description:* Compliance filing per 154.203: Map Filing in Compliance with Order No. 801 to be effective 4/1/2015.

*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5332.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–736–000.
*Applicants:* ETC Tiger Pipeline, LLC.
*Description:* Compliance filing per 154.203: Map Filing in Compliance with Order No. 801 to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5334.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–737–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* § 4(d) rate filing per 154.204: BBPC 2015–04–01 Releases to EDF Trading to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5353.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–738–000.
*Applicants:* Dominion Transmission, Inc.
*Description:* Compliance filing per 154.203: DTI—Order 801 Map Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5363.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–739–000.
*Applicants:* Dominion Cove Point LNG, LP.
*Description:* Compliance filing per 154.203: DCP—Order No. 801 Map Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5364.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–740–000.
*Applicants:* Bear Creek Storage Company, L.L.C.
*Description:* Annual Report on Operational Transactions of Bear Creek Storage Company, L.L.C.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5395.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–741–000.
*Applicants:* TC Offshore LLC.
*Description:* TC Offshore LLC Transporter's Use Report for Calendar Year Ending December 31, 2014.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5426.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–742–000.
*Applicants:* Central New York Oil And Gas Company, L.
*Description:* Petition for Declaratory Order of Central New York Oil And Gas Company, L.L.C.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5428.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–743–000.
*Applicants:* Questar Southern Trails Pipeline Company.
*Description:* Compliance filing per 154.203: RM14–21 Order 801 Compliance Filing—System Map to be effective 4/30/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5433.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–744–000.
*Applicants:* Questar Overthrust Pipeline Company.
*Description:* Compliance filing per 154.203: RM14–21 Order 801—System Map Compliance Filing to be effective 4/30/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5434.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–745–000.
*Applicants:* Questar Pipeline Company.
*Description:* Compliance filing per 154.203: RM14–21 Order 801 Compliance Filing-System Map to be effective 4/30/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5437.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–746–000.
*Applicants:* White River Hub, LLC.
*Description:* Compliance filing per 154.203: RM14–21 Order 801 Filing—System Map to be effective 4/30/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5443.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–747–000.
*Applicants:* Transcontinental Gas Pipe Line Company.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rates—Mobile Bay South III to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5463.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–748–000.
*Applicants:* Gulf States Transmission LLC.
*Description:* Compliance filing per 154.203: Gulf States Transmission LLC—Compliance with Order No. 801 on Pipeline Maps to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5491.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–749–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate Amendment—ODEC to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5492.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–750–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate PAL Agreements—Koch Energy Services, LLC to be effective 3/30/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5498.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–751–000.
*Applicants:* Destin Pipeline Company, L.L.C.
*Description:* Compliance filing per 154.203: System Map Update to be effective 4/1/2015.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5499.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–752–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Compliance filing per 154.203: Order No. 801 Compliance to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5008.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–753–000.
*Applicants:* Midcontinent Express Pipeline LLC.
*Description:* Compliance filing per 154.203: Order No. 801 Compliance to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5009.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–754–000.
*Applicants:* Kinder Morgan Louisiana Pipeline LLC.
*Description:* Compliance filing per 154.203: Order No. 801 Compliance to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5012.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–755–000.
*Applicants:* Cheyenne Plains Gas Pipeline Company, L.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5020.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–756–000.
*Applicants:* Colorado Interstate Gas Company, L.L.C.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5022.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–757–000.
*Applicants:* Wyoming Interstate Company, L.L.C.

*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5024.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–758–000.
*Applicants:* Young Gas Storage Company, Ltd.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5026.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–759–000.
*Applicants:* Kinder Morgan Illinois Pipeline LLC.
*Description:* Compliance filing per 154.203: Order No. 801 Compliance to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5027.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–760–000.
*Applicants:* Ruby Pipeline, L.L.C.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5029.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–761–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5030.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–762–000.
*Applicants:* Mojave Pipeline Company, L.L.C.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5032.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–763–000.
*Applicants:* TransColorado Gas Transmission Company L.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5034.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–764–000.
*Applicants:* Sierrita Gas Pipeline LLC.
*Description:* Compliance filing per 154.203: Order No. 801 System Map Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5037.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–765–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* § 4(d) rate filing per 154.204: No Fuel Segment to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5044.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–766–000.
*Applicants:* Wyoming Interstate Company, L.L.C.
*Description:* § 4(d) rate filing per 154.204: Tariff Merger Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5047.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–767–000.
*Applicants:* Vector Pipeline L.P.
*Description:* Compliance filing per 154.203: Order No. 801 Compliance Filing to be effective 5/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5101.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–768–000.
*Applicants:* Carolina Gas Transmission Corporation.
*Description:* Compliance filing per 154.203: Order No 801 Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5117.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–769–000.
*Applicants:* Panhandle Eastern Pipe Line Company, LP.
*Description:* Compliance filing per 154.203: Flow Through of Penalty Revenues Report filed on 3–31–15.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5129.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–770–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate Service Agreement—BP effective 4–1–2015 to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5141.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–771–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) rate filing per 154.204: Update Initial Retainage Rate Effective 4–1–2015 to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5151.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–772–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* Annual Incidental Purchases and Sales Report of Rockies Express Pipeline LLC.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5577.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–773–000.
*Applicants:* Trailblazer Pipeline Company LLC.
*Description:* Annual Incidental Purchases and Sales Report of Trailblazer Pipeline Company LLC.
*Filed Date:* 3/30/15.
*Accession Number:* 20150330–5578.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–774–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) rate filing per 154.204: Negotiated Capacity Release Agreements—3/31/2015 to be effective 3/31/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5180.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–775–000.
*Applicants:* Panther Interstate Pipeline Energy, LLC.
*Description:* Compliance filing per 154.203: Panther Order No. 801 Compliance Filing to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5194.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–776–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (BP 37–19) to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5196.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–777–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* § 4(d) rate filing per 154.204: Neg Rate Agmts Filing (Centerpoint 43985 & 43988) to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5198.
*Comments Due:* 5 p.m. ET 4/13/15.
*Docket Numbers:* RP15–778–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* § 4(d) rate filing per 154.204: Amendments to Neg Rate Agmts (FPL 41618 & 41619) to be effective 4/1/2015.
*Filed Date:* 3/31/15.
*Accession Number:* 20150331–5200.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–779–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* § 4(d) rate filing per 154.204: Non-conforming Agreements Update to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5202.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–780–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (Encana 37663 to BP 44312, 44368) to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5204.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–781–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (EOG 34687 to Tenaska 44350; Trans LA 44349) to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5205.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–782–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* § 4(d) rate filing per 154.204: Non-conforming Agreement Filing (Clarksdale 20393) to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5207.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–783–000.

*Applicants:* Panhandle Eastern Pipe Line Company, LP.

*Description:* Compliance filing per 154.203: Flow Through of Cash Out Revenues filed on 3–31–15 to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5209.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–784–000.

*Applicants:* Southern LNG Company, L.L.C.

*Description:* Compliance filing per 154.203: Order No. 801 Map Compliance Filing to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5211.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–785–000.

*Applicants:* ANR Pipeline Company.

*Description:* § 4(d) rate filing per 154.403(d)(2): DTCA 2015 to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5212.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–786–000.

*Applicants:* Horizon Pipeline Company, L.L.C.

*Description:* Compliance filing per 154.203: Order No. 801 Compliance to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5216.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–787–000.

*Applicants:* American Midstream (AlaTenn), LLC.

*Description:* Compliance filing per 154.203: AlaTenn Order No. 801 Compliance Filing to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5219.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–788–000.

*Applicants:* American Midstream (Midla), LLC.

*Description:* Compliance filing per 154.203: Midla Order No. 801 Compliance Filing to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5225.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–789–000.

*Applicants:* High Point Gas Transmission, LLC.

*Description:* Compliance filing per 154.203: High Point Order No. 801 Compliance Filing to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5235.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–790–000.

*Applicants:* Southern Natural Gas Company, L.L.C.

*Description:* Compliance filing per 154.203: Order No. 801 Map Compliance Filing to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5255.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–791–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* § 4(d) rate filing per 154.204: J. Aron Negotiated Rate to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5256.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–792–000.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* § 4(d) rate filing per 154.204: Neg Rate 2015–03–31 Encana, BP, ConocoPhillips to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5257.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–793–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* § 4(d) rate filing per 154.204: Neg Rate 2015–03–31 Mieco to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5258.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–794–000.

*Applicants:* Elba Express Company, L.L.C.

*Description:* Compliance filing per 154.203: Order No. 801 Map Compliance Filing to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5259.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–795–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* Compliance filing per 154.203: 03/31/15 System Map Removal/.Replacement per FERC Order 801—RM14–21–000 to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5260.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–796–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* § 4(d) rate filing per 154.204: ConEd 2015–04–01 release to BP Energy to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5269.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–797–000.

*Applicants:* Transcontinental Gas Pipe Line Company.

*Description:* Compliance filing per 154.203: Order No. 801 Tariff Map Removal to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5312.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–798–000.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* Compliance filing per 154.203: Order 801 Compliance Filing—System Maps to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5429.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–799–000.

*Applicants:* Columbia Gulf Transmission, LLC.

*Description:* Compliance filing per 154.203: Order 801 Compliance Filing—System Maps to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5433.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–800–000.

*Applicants:* Central Kentucky Transmission Company.

*Description:* Compliance filing per 154.203: Order 801 Compliance Filing—System Maps to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5435.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–801–000.

*Applicants:* Hardy Storage Company, LLC.

*Description:* Compliance filing per 154.203: Order 801 Compliance Filing—System Maps to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5436.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–802–000.

*Applicants:* Crossroads Pipeline Company.

*Description:* Compliance filing per 154.203: Order 801 Compliance Filing—System Maps to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5441.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–803–000.

*Applicants:* Millennium Pipeline Company, LLC.

*Description:* Compliance filing per 154.203: Order 801 Compliance Filing—System Maps to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5445.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–804–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* Compliance filing per 154.203: Order No. 801 CF (Map Link)—National Fuel to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5448.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–805–000.

*Applicants:* Vector Pipeline L. P.

*Description:* Annual Fuel Use Report of Vector Pipeline L. P.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5475.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–806–000.

*Applicants:* Kern River Gas Transmission Company.

*Description:* 2015 Gas Compressor Fuel Report of Kern River Gas Transmission Company.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5509.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–807–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* § 4(d) rate filing per 154.204: Non-conforming Agreements for April 2015 to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5512.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–808–000.

*Applicants:* No Applicants listed for this docket/subdocket.

*Description:* § 4(d) rate filing per 154.204: 20150331 Negotiated Rate to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5552.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–809–000.

*Applicants:* East Tennessee Natural Gas, LLC.

*Description:* East Tennessee Natural Gas, LLC submits 2013–2014 Cashout Report.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5576.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–810–000.

*Applicants:* Kinder Morgan Illinois Pipeline LLC.

*Description:* § 4(d) rate filing per 154.204: Filing to Substitute Published Index Prices to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5585.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–811–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Tariff Cancellation per 154.602: Cancel Rate Schedule FTS–4 to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5625.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–812–000.

*Applicants:* Empire Pipeline, Inc.

*Description:* § 4(d) rate filing per 154.204: Index (Empire) to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5626.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–813–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* § 4(d) rate filing per 154.204: Negotiated Rate PAL Agreements: Exelon Generation Company & Koch Energy Services to be effective 3/31/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5627.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–814–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* § 4(d) rate filing per 154.204: Index (Supply) to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5629.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–815–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* § 4(d) rate filing per 154.601: Negotiated Rate Agreement Update (SRP) to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5637.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–816–000.

*Applicants:* Tennessee Gas Pipeline Company, L.L.C.

*Description:* Compliance filing per 154.203: MAPS Compliance Filing—Order No. 801 to be effective 5/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5641.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–817–000.

*Applicants:* Gulf Crossing Pipeline Company LLC.

*Description:* Compliance filing per 154.203: Compliance to Order No. 801 Filing to be effective 5/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5178.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–818–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Compliance filing per 154.203: Compliance to Order 801 filing (URL for Maps) to be effective 5/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5181.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–819–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Compliance filing per 154.203: Compliance to Order No. 801 to be effective 5/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5183.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–820–000.

*Applicants:* Boardwalk Storage Company, LLC.

*Description:* Compliance filing per 154.203: Compliance to Order No. 801 to be effective 5/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5186.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–821–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* § 4(d) rate filing per 154.204: Amendments to Neg Rate Agmts (FPL 41618–4, 41619–2, 40097–11) to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5188.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–822–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmts (PH

41455, 41448 to Texla and Sequent, various) to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5189.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–823–000.

*Applicants:* Viking Gas Transmission Company.

*Description:* Compliance filing per 154.203: Pipeline Maps—Compliance Filing Pursuant to Order No. 801 in RM14–21–000 to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5190.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–824–000.

*Applicants:* Stingray Pipeline Company, L.L.C.

*Description:* Compliance filing per 154.203: Stingray Order 801 Compliance Filing to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5195.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–825–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* Compliance filing per 154.203: Pipeline Maps—Compliance Filing Pursuant to Order No. 801 in RM14–21–000 to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5197.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–826–000.

*Applicants:* Midwestern Gas Transmission Company.

*Description:* Compliance filing per 154.203: Pipeline Maps—Compliance Filing Pursuant to Order No. 801 in RM14–21–000 to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5200.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–827–000.

*Applicants:* OkTex Pipeline Company, L.L.C.

*Description:* Compliance filing per 154.203: Pipeline Maps—Compliance Filing Pursuant to Order No. 801 in RM14–21–000 to be effective 4/1/2015.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5203.

*Comments Due:* 5 p.m. ET 4/13/15.

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.

**Filings in Existing Proceedings**

*Docket Numbers:* RP12–308–001.

*Applicants:* Golden Pass Pipeline LLC.

*Description:* Compliance filing per 154.203: Revised Tariff Record per 11/20/2014 Order 801 to be effective 4/1/2015.

*Filed Date:* 3/30/15.

*Accession Number:* 20150330–5365.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–23–004.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Compliance filing per 154.203: RP15–23 Place Rate Case Tariff Records into Effect to be effective 4/1/2015.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5621.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* RP15–681–001.

*Applicants:* MIGC LLC.

*Description:* Tariff Withdrawal per 154.205(a): Withdraw Amendment to Docket No. RP15–681.

*Filed Date:* 3/31/15.

*Accession Number:* 20150331–5310.

*Comments Due:* 5 p.m. ET 4/13/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: April 1, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08367 Filed 4–10–15; 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:* EC15–114–000.

*Applicants:* Pattern US Finance Company LLC, Lost Creek Wind, LLC, Post Rock Wind Power Project, LLC.

*Description:* Application for Authorization of Transaction Under Section 203 of the FPA, Requests for Expedited Action, Waivers of Filing Requirements and Confidential Treatment of Transaction Documents of Pattern US Finance Company LLC, et al.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5112.

*Comments Due:* 5 p.m. ET 4/27/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1325–002; ER10–1946–002; ER14–2323–000; ER11–2080–002; ER10–1333–002; ER14–2319–000; ER12–1958–002; ER14–2321–000; ER10–1335–002.

*Applicants:* CinCap V LLC, Duke Energy Beckjord, LLC, Duke Energy Carolinas, LLC, Duke Energy Commercial Asset Management, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Florida, Inc., Duke Energy Piketon, LLC, Duke Energy Progress, Inc., Duke Energy Retail Sales, LLC.

*Description:* Duke Energy et al submits the updated triennial market power analysis under ER10–1325 et al.

*Filed Date:* 3/30/15.

*Accession Number:* 20150402–0052.

*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* ER10–1819–010; ER10–1820–013.

*Applicants:* Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

*Description:* Triennial Market Power Analysis in Central Region [ER15–754–000] of Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation.

*Filed Date:* 4/3/15.

*Accession Number:* 20150403–5113.

*Comments Due:* 5 p.m. ET 6/2/15.

*Docket Numbers:* ER10–2220–004.

*Applicants:* New York Independent System Operator, Inc.

*Description:* Motion to Terminate the Reporting Obligation of the New York Independent System Operator, Inc.

*Filed Date:* 3/24/15.

*Accession Number:* 20150324–5094.

*Comments Due:* 5 p.m. ET 4/14/15.

*Docket Numbers:* ER15–1218–000.

*Applicants:* Solar Star California XIII, LLC.

*Description:* Clarification to March 11, 2015 Solar Star California XIII, LLC tariff filing.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5742.

*Comments Due:* 5 p.m. ET 4/22/15.

*Docket Numbers:* ER15–1451–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* Compliance filing per 35: 2015–04–03_Waiver_

VirtualBiddingInterties to be effective N/A.

*Filed Date:* 4/3/15.

*Accession Number:* 20150403–5155.

*Comments Due:* 5 p.m. ET 4/13/15.

*Docket Numbers:* ER15–1452–000.

*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–06_SA 2765 MidAmerican Energy Company-Ameren Illinois TIA to be effective 3/30/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5040.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1453–000.

*Applicants:* Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc.

*Description:* Application of Entergy Services, Inc., on behalf of the Entergy Operating Companies for 2014 Transmission Formula Rate for Post-Retirement Benefits Other than Pensions.

*Filed Date:* 4/1/15.

*Accession Number:* 20150401–5754.

*Comments Due:* 5 p.m. ET 4/22/15.

*Docket Numbers:* ER15–1454–000.

*Applicants:* ITC Midwest LLC.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Joint Use Agreement—ITC Midwest and Eastern Iowa to be effective 6/6/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5070.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1455–000.

*Applicants:* ISO New England Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Conforming Filing to be effective 1/12/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5074.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1456–000.

*Applicants:* Beaver Falls, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Notice of Succession to be effective 3/6/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5081.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1457–000.

*Applicants:* Syracuse, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Notice of Succession to be effective 3/6/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5086.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1458–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–06_SA 2764 MidAmerican-MidAmerican GIA (J343) to be effective 4/7/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5116.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1459–000.

*Applicants:* Emera Maine.

*Description:* Compliance filing per 35: Filing of EM–4 EPC Agreement with Blue Sky West to be effective 9/15/2014.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5152.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1459–001.

*Applicants:* srEmera Maine.

*Description:* Compliance filing per 35: Amended EM–4 EPC Agreement with Blue Sky West to be effective 3/6/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5158.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1460–000.

*Applicants:* Southwestern Public Service Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–4–6_SPS–GSEC–IA-Aggie Sub-665–0 1 0—Filing to be effective 4/30/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5153.

*Comments Due:* 5 p.m. ET 4/27/15.

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: April 6, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08366 Filed 4–10–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15–1461–000.

*Applicants:* MidAmerican Energy Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): MidAmerican-Ameren Transmission Interconnection Agreement to be effective 3/30/2015.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5172.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1462–000.

*Applicants:* ISO New England Inc.

*Description:* Identification of Potential New Capacity Zone Boundaries of ISO New England, Inc.

*Filed Date:* 4/6/15.

*Accession Number:* 20150406–5205.

*Comments Due:* 5 p.m. ET 4/27/15.

*Docket Numbers:* ER15–1463–000.

*Applicants:* Triton Energy, Inc.

*Description:* Initial rate filing per 35.12 Triton Energy, Inc. MBR Tariff to be effective 5/15/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5087.

*Comments Due:* 5 p.m. ET 4/28/15.

*Docket Numbers:* ER15–1464–000.

*Applicants:* PJM Interconnection, L.L.C., Rochelle Municipal Utilities.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): PJM and City of Rochelle submit revisions to PJM OATT and TOA re: integration to be effective 8/1/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5105.

*Comments Due:* 5 p.m. ET 4/28/15.

*Docket Numbers:* ER15–1465–000.

*Applicants:* PJM Interconnection, L.L.C., Rochelle Municipal Utilities.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): PJM and City of Rochelle submit revisions to OATT and TOA re: integration to be effective 8/1/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5112.

*Comments Due:* 5 p.m. ET 4/28/15.

*Docket Numbers:* ER15–1466–000.

*Applicants:* ISO New England Inc., New England Power Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement Nos. TSA–NEP–83 and TSA–NEP–86 Under ISO–NE OATT to be effective 6/7/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5130.

*Comments Due:* 5 p.m. ET 4/28/15.

*Docket Numbers:* ER15–1467–000.

*Applicants:* Emera Maine.

*Description:* Compliance filing per 35: Emera Maine Filing of Blue Sky East E and P Agreement to be effective 6/8/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5136.

*Comments Due:* 5 p.m. ET 4/28/15.

*Docket Numbers:* ER15–1468–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–07_Attachment E revisions to be effective 6/7/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5159.

*Comments Due:* 5 p.m. ET 4/28/15.

*Docket Numbers:* ER15–1469–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): White Pine Solar LGIA Filing to be effective 3/24/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407–5209.

*Comments Due:* 5 p.m. ET 4/28/15.

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: April 7, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08398 Filed 4–10–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP15–146–000]**

### Mountaineer Gas Company, LLC; Notice of Petition for Declaratory Order

Take notice that on March 27, 2015, Mountaineer Gas Company, LLC pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2014) filed a petition for Declaratory Order requesting the Commission to declare that certain facilities (part of the ''SM–108 System'') in Cabell and Putnam Counties, West Virginia, being acquired by Mountaineer from Columbia Gas Transmission Company, LLC, (Columbia) and reconfigured into Mountaineer's local distribution system are ''local distribution'' facilities exempt from the Commission's NGA jurisdiction pursuant to section 1(b) of the NGA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 27, 2015.

Dated: April 6, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08368 Filed 4–10–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL15–57–000]**

### GenOn Energy Management, LLC v. ISO New England Inc.; Notice of Complaint

Take notice that on April 6, 2015, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, GenOn Energy Management, LLC (Complainant), filed a formal complaint against ISO New England Inc. (Respondent or ISO–NE), alleging, that the Respondent improperly submitted a demand bid on behalf of the Complainant in the annual reconfiguration auction for the 2015–2016 Capacity Commitment Period. Alternatively, the Complainant requests waiver of the ISO–NE Transmission, Markets and Services Tariff in order to permit ISO–NE to use the results of the Seasonal Claimed Capability Audit that was approved by ISO–NE on January 29, 2015, for the purposes of calculating the qualified capacity of Unit 2 at the Canal Generating Plant.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the

''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 6, 2015.

Dated: April 7, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08400 Filed 4–10–15; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9926–12–Region–1]**

### Proposed CERCLA Administrative Settlement Agreement and Order on Consent for Removal Action: Former Synergy Site, Claremont, New Hampshire

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

**ACTION:** Notice of proposed settlement; request for public comments.

**SUMMARY:** Notice is hereby given of a proposed administrative settlement agreement and order on consent for conducting removal action at the Former Synergy Superfund Site in Claremont, New Hampshire with the settling party, AmeriGas Propane, L.P. The proposed settlement calls for AmeriGas Propane, L.P. to conduct the removal action and allows the settling party to submit a claim(s) for reimbursement to the Hazardous Substance Superfund (''Fund'') for its necessary costs incurred in completing the removal action, but in no event shall settling party's total claim(s) against the Fund under the proposed settlement exceed the sum of $1,500,000; any costs incurred beyond this sum shall be assumed by AmeriGas Propane, L.P. In addition to conducting the removal action, AmeriGas Propane, L.P. will create a contingency fund of $75,000 for the City of Claremont, New Hampshire to use for future contingencies related to the site. In exchange, EPA will provide AmeriGas Propane, L.P. with a covenant not to sue or take administrative action against it, or its related corporate entities for the work and future response costs incurred at the site. The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice. For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, MA 02109–3912.

**DATES:** Comments must be submitted by May 13, 2015.

**ADDRESSES:** Comments should be addressed to RuthAnn Sherman, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–2), Boston, MA 02109–3912 (Telephone No. 617–918–1886) and should refer to: In re: Former Synergy Superfund Site, U.S. EPA Docket No: 01–2015–0027.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed settlement may be obtained from RuthAnn Sherman, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–2), Boston, MA 02109–3912; (617) 918–1886; *Sherman.ruthann@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to sections 111(a)(2), 112, and 122(b)(1) of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA), 42 U.S.C. 9611(a)(2), 9612, and 9622(b)(1), in this proposed administrative settlement agreement and order on consent for removal action concerning the Former Synergy Superfund Site in Claremont, New Hampshire, the settling party, AmeriGas Propane, L.P. may submit a claim for reimbursement to the Hazardous Substance Superfund for its necessary costs incurred in completing the removal action, but in no event shall settling party's total claim(s) against the Fund under the proposed settlement exceed the sum of $1,500,000. EPA's total contribution will be no more than $1,500,000; any costs incurred beyond this sum shall be assumed by AmeriGas Propane L.P. In addition to conducting the removal action, the settling party shall create a contingency fund of $75,000 to the City of Claremont, New Hampshire to provide for future contingencies related to the site. In exchange, EPA will provide AmeriGas Propane, L.P. with a covenant not to sue or take administrative action against it, or its related corporate entities, under sections 106 and 107(a) of the Comprehensive Environmental Response Compensation, and Liability Act for the work and future response costs incurred at the site. The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice.

Dated: April 1, 2015.

**Nancy Barmakian,**

*Acting Director, Office of Site Remediation and Restoration.*

[FR Doc. 2015–08429 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[9924–67–Region 1]**

### Proposed CERCLA Administrative Cost Recovery Settlement; Adam Spell, St. Albans Gas and Light Company Site, St. Albans, Vermont

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

**ACTION:** Notice of proposed settlement; request for public comments.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs under CERCLA section 122(h) and 104(e), concerning the St. Albans Gas and Light Company Superfund Site in St. Albans, Vermont with the following settling party: Adam Spell. The settlement requires Adam Spell to pay $41,694 to the Hazardous Substance Superfund, with interest.

For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, MA 02109–3912.

**DATES:** Comments must be submitted by May 13, 2015.

**ADDRESSES:** Comments should be addressed to Michelle Lauterback, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–3), Boston, MA 02109–3912 (Telephone No. 617–918–1774) and should refer to:

In re: St. Albans Gas and Light Company Superfund Site, U.S. EPA Docket No. 01–2015–0023.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed settlement may be obtained from Michelle Lauterback, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–3), Boston, MA 02109–3912; (617) 918–1774; *Lauterback.michelle@epa.gov).*

**SUPPLEMENTARY INFORMATION:** In this proposed administrative settlement for recovery of response costs under CERCLA section 122(h)(1) and 104(e)(6), concerning the St. Albans Gas and Light Company Superfund Site in St. Albans, Vermont, requires settling party, Adam Spell to pay $41,694 to the Hazardous Substance Superfund, with interest. The settlement includes a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, and protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4). The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice.

Dated: March 17, 2015.

**Nancy Barmakian,**

*Acting Director, Office of Site Remediation and Restoration.*

[FR Doc. 2015–08428 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[9926–13–Region 9]**

### San Gabriel Valley Area 2 Superfund Site; Proposed Notice of Administrative Settlement

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.,* notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the San Gabriel Valley Area 2 Superfund Site was executed by the United States Environmental Protection Agency (EPA) on March 25, 2015. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) against Reichhold LLC, a Delaware corporation (the Purchaser). The Purchaser plans to acquire Reichhold, Inc.'s chemical plant, comprising approximately 8.878 acres, located at 237 South Motor Avenue, Azusa, California, within the Baldwin Park Operable Unit (BPOU) of the San Gabriel Valley Area 2 Superfund Site. The proposed settlement would provide the following benefit to EPA: The purchaser will pay $800,000 in cash, to be held in reserve in a special account for future cleanup work at the BPOU, as needed. Reichhold, Inc., is not a signatory to the Prospective Purchaser Agreement. The Purchaser is not directly affiliated with Reichhold, Inc.

For 30 calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Submit comments on or before May 13, 2015.

**ADDRESSES:** The proposed Prospective Purchaser Agreement is available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. The document can be accessed through the Internet on EPA Region 9's Web site located at: *http://www.epa.gov/region09/waste/brown/ppa.html.*

A copy of the proposed settlement may also be obtained from Janet A. Magnuson, Assistant Regional Counsel, (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco 94105. Comments should reference ''Reichhold, LLC PPA, San Gabriel Valley Area 2 Superfund Site'' and ''Docket No. 2015–04'' and should be addressed to Janet A. Magnuson at the above address.

**FOR FURTHER INFORMATION CONTACT:** Janet Magnuson, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3887; fax: (415) 947–3570; email: *magnuson.janet@epa.gov.*

Dated: March 31, 2015.

**Enrique Manzanilla,**

*Superfund Division Director, U.S. EPA Region IX.*

[FR Doc. 2015–08427 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R09–OAR–2014–0545; FRL–9926–14–Region–9]**

### Decision To Issue Clean Air Act Permit for the Four Corners Power Plant

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

**ACTION:** Notice of final agency action.

**SUMMARY:** This notice announces that the Environmental Protection Agency (EPA) issued a final permit decision for a Clean Air Act Prevention of Significant Deterioration (PSD) permit and Minor New Source Review (NSR) Permit in Indian Country to Arizona Public Service Company (APS) for the construction of add-on pollution controls for the Four Corners Power Plant (FCPP). Specifically, the permit authorizes APS to construct and operate selective catalytic reduction (SCR) systems, including ancillary equipment, on two existing coal-fired electric steam generating units at FCPP.

**DATES:** EPA Region 9 issued a final PSD permit decision for the FCPP on December 19, 2014. The permit became effective 30 days after the service of notice of the final permit decision. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of April 13, 2015.

**ADDRESSES:** Documents relevant to the above-referenced permit are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. To arrange for viewing of these documents, call Lisa Beckham at (415) 972–3811. Due to building security procedures, at least 48 hours advance notice is required.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region 9, (415) 972–3811, *beckham.lisa@epa.gov.* Key portions of the administrative record for this decision (including the final permit, all public comments, EPA's responses to the public comments, and additional supporting information) are available through a link at Region 9's Web site, *http://www.epa.gov/region9/air/permit/r9-permits-issued.html#psd,* or at *www.regulations.gov* (Docket ID # EPA–R09–OAR–2014–0545).

**NOTICE OF FINAL ACTION AND SUPPLEMENTARY INFORMATION:** On December 19, 2014, EPA Region 9

issued its final permit decision to APS authorizing the construction and operation of add-on pollution controls at the FCPP—PSD Permit No. NN 14–01 and Tribal Minor NSR Permit T–002–NN. EPA issued a Prevention of Significant Deterioration (PSD) permit and Minor New Source Review (NSR) Permit in Indian Country that grants conditional approval to APS, in accordance with the PSD regulations (40 CFR 52.21) and the Minor NSR regulations for Indian Country (40 CFR 49.151–161). The permit authorizes APS to construct and operate SCR systems, including ancillary equipment, on two existing coal-fired electric steam generating units at FCPP.

During the public comment period and public hearings, EPA received written and oral comments regarding its proposed permit action to approve the FCPP SCR project. EPA carefully reviewed the public hearing testimony and each of the written comments submitted and, after consideration of the expressed views of all commenters, the pertinent Federal statutes and regulations, and additional material relevant to the application and contained in our Administrative Record, EPA made a decision, in accordance with 40 CFR 52.21, to issue a final PSD permit and, in accordance with 40 CFR 49.151–161, to issue a final Tribal Minor NSR permit to APS.

Within 30 days after the service of notice announcing the final permit decision, any person who filed comments on the proposed permit for the FCPP SCR project or participated in any of the public hearings for the FCPP SCR project had the opportunity pursuant to 40 CFR part 124 to petition EPA's Environmental Appeals Board (EAB) to review any condition of the final permit. Any person who did not file comments or participate in the public hearings could petition for administrative review only to the extent that changes were made from the proposed to the final permit decision. No petitions for review were filed with the EAB. As such, the final permit became effective 30 days after the service of notice of the final permit decision.

Dated: March 31, 2015.

**Deborah Jordan,**

*Director, Air Division, Region IX.*

[FR Doc. 2015–08476 Filed 4–10–15; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[GN Docket No. 12–268; FCC 14–50]**

### Information Collection Approval for the Certification of TV Broadcast Licensee Technical Information in Advance of Incentive Auction

**AGENCY:** Federal Communications Commission.

**ACTION:** Announcement of approval date for information collection.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) approved on March 31, 2015, for a period for three years, an information collection for the FCC Certification of TV Broadcast Licensee Technical Information in Advance of Incentive Auction, FCC Form 2100, Schedule 381. With this document, the Commission is announcing OMB approval and the effective date of the information collection requirements for FCC Form 2100, Schedule 381.

**DATES:** FCC Form 2100, Schedule 381, was approved by OMB on March 31, 2015 and is effective on April 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This document announces that, on March 31, 2015, OMB approved the information collection requirements for the FCC Certification of TV Broadcast Licensee Technical Information in Advance of Incentive Auction, FCC Form 2100, Schedule 381, published at 79 FR 48442 on August 15, 2014. The OMB Control Number is 3060–1206. The Commission publishes this document as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1206, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on March 31, 2015, for the information collection requirements contained in the information collection 3060–1206.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1206. The foregoing document is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1206.

*OMB Approval Date:* March 31, 2015.

*OMB Expiration Date:* March 31, 2018.

*Title:* Certification of TV Broadcast Licensee Technical Information in Advance of Incentive Auction.

*Form No.:* FCC Form 2100, Schedule 381, Pre-Auction Technical Certification Form.

*Respondents:* Business or other for profit entities; Not for profit institutions.

*Number of Respondents and Responses:* 2,170 respondents and 2,170 responses.

*Estimated Time Per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Pub. L. 112–96, sections 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

*Total Annual Burden:* 2,170 hours.

*Total Annual Cost:* $542,500.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* Some assurances of confidentiality are being provided to the respondents. Parties filing Form 2100, Schedule 381 may seek confidential treatment of information they provide pursuant to the Commission's existing confidentiality rules (*See* 47 CFR 0.459).

*Needs and Uses:* The information gathered in this collection will be used to support the Federal Communications

Commission's efforts to hold an incentive auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) (Pub. L. 112–96, sections 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012)). In the *Incentive Auction Order,* the Commission directed the Media Bureau to develop a form to be submitted prior to the incentive auction by each full power and Class A broadcast licensee to certify that it has reviewed the technical data on file with the Commission related to its current license authorization and confirm that the technical data is correct with respect to actual operations FCC Form 2100, Schedule 381, Pre-Auction Technical Certification Form. *See* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, GN Docket 12–268, Report and Order, 29 FCC Rcd 6567, 6820 (2014) (''*Incentive Auction Order''*). This data collection will also collect from licensees basic data regarding equipment currently in use at each licensed facility to facilitate the channel reassignment process following the completion of the incentive auction. Licensees will submit FCC Form 2100, Schedule 381 one time, at a deadline to be announced by the Media Bureau in advance of the incentive auction.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015–08178 Filed 4–10–15; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1512]**

### Solicitation of Statements of Interest for Membership on the Community Advisory Council

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** On January 16, 2015, the Board of Governors of the Federal Reserve System (Board) established the Community Advisory Council (the ''CAC'') as an advisory committee to the Board on issues affecting consumers and communities. This Notice advises individuals who wish to serve as CAC members of the opportunity to be considered for the CAC.

**DATES:** Statements of Interest received on or before June 12, 2015 will be given consideration for selection to the Board's Council for appointment in 2015.

**ADDRESSES:** Individuals who are interested in being considered for the CAC may submit a Statement of Interest via the Board's Web site or via email. The Statement of Interest can be accessed at *www.federalreserve.gov/secure/CAC/StatementOfInterest/*. Emailed submissions can be sent to *CCA-CAC@frb.gov*. The Statement of Interest collects only contact information. Candidates may also choose to provide additional information about their qualifications in the form of a cover letter, resume, or other document. Any such supplemental materials may be emailed to *CCA-CAC@frb.gov*.

If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop N–805, 20th Street and Constitution Ave. NW., Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** Andrew Dumont, Senior Community Development Analyst, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW., Washington, DC 20551, or (202) 452–2412, or *CCA-CAC@frb.gov*. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** The Board created the Community Advisory Council (CAC) as an advisory committee to the Board on issues affecting consumers and communities. The CAC will comprise a diverse group of experts and representatives of consumer and community development organizations and interests, including from such fields as affordable housing, community and economic development, small business, and asset and wealth building. CAC members will meet semiannually with the members of the Board in Washington, DC to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities. The CAC will complement two of the Board's other advisory councils—the Community Depository Institutions Advisory Council (CDIAC) and the Federal Advisory Council (FAC)—whose members represent depository institutions. The CAC will serve as a mechanism to gather feedback and perspectives on a wide range of policy matters and emerging issues of interest to the Board of Governors and aligns with the Federal Reserve's mission and current responsibilities. These responsibilities include, but are not limited to, banking supervision and regulatory compliance (including the enforcement of consumer protection laws), systemic risk oversight and monetary policy decision-making, and, in conjunction with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC), responsibility for implementation of the Community Reinvestment Act (CRA).

This Notice advises individuals of the opportunity to be considered for appointment to the CAC. To assist with the selection of CAC members, the Board will consider the information submitted by the candidate along with other publicly available information that it independently obtains.

#### Council Size and Terms

In the fall of 2015, the Board plans to announce the appointment of fifteen members to the CAC. The initial CAC members will be assigned one-, two-, or three-year staggered terms to provide the CAC with continuity. Members chosen in the fall of 2016 will be appointed to three-year terms that will begin on January 1, 2017. If a member vacates the CAC before the end of the three-year term, a replacement member will be appointed to fill the unexpired term.

#### Statement of Interest

Statements of Interest for the CAC collects the following contact information about the candidate:

- Full name;
- Organizational affiliation;
- Title;
- Address;
- Phone number; and
- Email address.

At their option, candidates may also provide additional information about their qualifications in the form of a cover letter, resume, or other document.

#### Qualifications

The Board is interested in candidates with knowledge of fields such as affordable housing, community and economic development, small business, and asset and wealth building, with a particular focus on the concerns of low- and moderate-income consumers and communities. Candidates do not have to be experts on all topics related to consumer financial services or community development, but they should possess some basic knowledge of these areas and related issues. In appointing members to the CAC, the Board will consider a number of factors, including diversity in terms of subject

matter expertise, geographic representation, and the representation of women and minority groups.

CAC members must be willing and able to make the necessary time commitment to participate in organizational conference calls and prepare for and attend meetings two times a year (usually for two days). The meetings will be held at the Board's offices in Washington, DC The Board will provide a nominal honorarium and will reimburse CAC members only for their actual travel expenses subject to Board policy.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, April 7, 2015.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2015–08354 Filed 4–10–15; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 28, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Beth A. Sparboe Schnell, Hamel, Minnesota, and Garth D. Sparboe, Des Moines, Iowa, each as a personal representative of the Estate of Robert D. Sparboe*, individually and as a control group acting in concert, to retain voting shares of CNB Financial Corporation, and thereby indirectly retain voting shares of Center National Bank, both in Litchfield, Minnesota.

Board of Governors of the Federal Reserve System, April 8, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015–08372 Filed 4–10–15; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 152 3015]**

### TES Franchising, LLC; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 7, 2015.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/tesfranchisingconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''TES Franchising, LLC, Consent Agreement; File No. 1523015'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/tesfranchisingconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''TES Franchising, LLC, Consent Agreement; File No. 1523015'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Jessica Lyon, Bureau of Consumer Protection, (202) 326–2344, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 7, 2015. Write ''TES Franchising, LLC, Consent Agreement; File No. 1523015'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/tesfranchisingconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''TES Franchising, LLC, Consent Agreement; File No. 1523015'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 7, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to TES Franchising, LLC (''TES'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that TES made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland (collectively, ''Safe Harbor Frameworks'') and concerning the handling of consumer disputes relating to the Safe Harbor Frameworks. The proposed complaint also alleges that TES made false or misleading representations to the effect that it was a current licensee of the TRUSTe self-regulatory program.

The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Among other things, the enforcement principle requires companies to provide a readily available and affordable independent recourse mechanism to investigate and resolve an individual's complaints and disputes. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Frameworks.

TES provides business coaching services to franchisees. According to the Commission's complaint, TES has set forth on its Web site, *www.entrepreneursource.com,* privacy policies and statements about its practices, including (1) statements related to its participation in the Safe Harbor Frameworks and (2) statements indicating that it is a licensee of the TRUSTe Privacy Program.

The Commission's complaint alleges that from March 2013 until February 2015 TES falsely represented that it was a ''current'' participant in the Safe Harbor Frameworks when, in fact, the company's self-certifications had lapsed. The Commission's complaint also alleges that during this same time period TES represented that all Safe Harbor-related disputes would be settled by an ''arbitration administered agency'' such as the American Arbitration Association, that hearings would take place in Connecticut, and that the costs of arbitration would be shared equally by the parties. In fact, the independent recourse mechanism authorized under TES's Safe Harbor certification was the European data protection authorities, which resolve Safe Harbor-related disputes at no cost to consumers and do not require in-person hearings. The Commission's complaint alleges that these false representations are likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company.

The Commission's complaint further alleges that until February 2015, TES represented through statements in its online privacy policy that it was a current licensee of the TRUSTe Privacy Program, when, in fact, it was not a current licensee.

Part I of the proposed order prohibits TES from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework, the U.S.-Swiss Safe Harbor Framework, and the TRUSTe privacy programs. Part II of the proposed order also prohibits TES from misrepresenting in any manner, its participation in, or the rules, processes, policies, or costs of, any alternative dispute resolution process or service, including but not limited to, arbitration, mediation, or other independent recourse mechanism.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires TES to retain documents relating to its compliance with the order for a five-year period. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that TES submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2015–08385 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## FEDERAL TRADE COMMISSION

**[File No. 152 3051]**

### American International Mailing, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 7, 2015.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/americaninternconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''American International Mailing, Inc.—Consent Agreement; File No. 152 3051'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/americaninternconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''American International Mailing, Inc.—Consent Agreement; File No. 152 3051'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Monique Einhorn, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 7, 2015. Write ''American International Mailing, Inc.—Consent Agreement; File No. 152 3051'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/americaninternconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''American International Mailing, Inc.—Consent Agreement; File No. 152 3051'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 7, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to American International Mailing, Inc. (''American International Mailing'' or ''AIM'').

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that AIM made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework''). The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the U.S.-EU Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the U.S.-EU Safe Harbor Framework.

American International Mailing provides a service for transporting mail, parcels, and freight worldwide. According to the Commission's complaint, AIM has set forth on its Web site, *www.aimmailing.com/privacy.html,* privacy policies and statements about its practices, including statements related to its participation in the U.S-EU Safe Harbor Framework.

The Commission's complaint alleges that American International Mailing falsely represented that it was a ''current'' participant in the U.S.-EU Safe Harbor Framework when, in fact, from May 2010 until January 2015, AIM was not a ''current'' participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in May 2006, American International Mailing submitted its self-certification to the U.S.-EU Safe Harbor Framework. AIM did not renew its self-certification in May 2010 and Commerce subsequently updated American International Mailing's status to ''not current'' on its public Web site. In January 2015, American International Mailing removed its Safe Harbor representation from its Web site privacy policy.

Part I of the proposed order prohibits American International Mailing from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires American International Mailing to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that American International Mailing submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2015–08480 Filed 4–10–15; 8:45 am]

**BILLING CODE 6750–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 132 3084]**

## Network Solutions, LLC; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 7, 2015.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/networksolutionsconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Network Solutions, LLC—Consent Agreement; File No. 132 3084'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/networksolutionsconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Network Solutions, LLC—Consent Agreement; File No. 132 3084'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** James Evans, Bureau of Consumer Protection, (202) 326–2026, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 7, 2015. Write ''Network Solutions, LLC—Consent Agreement; File No. 132 3084'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of

discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/networksolutionsconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Network Solutions, LLC—Consent Agreement; File No. 132 3084'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 7, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Network Solutions, LLC (''Network Solutions''). The Commission has placed the proposed Order on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed Order.

Network Solutions advertises and sells web hosting services. The company's web hosting services allow customers to make Web pages available on the internet by storing their Web page information, including programming code, images, and videos, on Web servers owned or leased by Network Solutions, and by providing the technology and internet connectivity required to serve the Web pages on the internet. Network Solutions has sold its web hosting services subject to a thirty-day money back guarantee. It has advertised that guarantee on its Web site.

The Commission's proposed Complaint alleges that Network Solutions failed to disclose adequately that its web hosting thirty-day money back guarantee could be subject to a cancellation fee. This cancellation fee was sometimes a substantial portion of the purchase price. Network Solutions did not disclose the cancellation fee on its Web pages advertising the guarantee. Instead, at the bottom of those Web pages, Network Solutions included a hyperlink to ''Terms and Conditions'' for the guarantee. This link often appeared in smaller print than the rest of the Web page and sometimes also appeared in blue text against a black background. The link opened a pop-up window that disclosed the existence of the cancellation fee. The Commission's proposed Complaint alleges that, coupled with the triggering representation that it offers a thirty-day money back guarantee, Network Solutions' failure to disclose adequately the cancellation fee is a deceptive act or practice under Section 5 of the FTC Act.

The proposed Order contains provisions designed to prevent Network Solutions from engaging in the same or similar acts or practices in the future. Section I of the proposed Order requires Network Solutions to clearly and conspicuously disclose the material terms of any money back guarantees applicable to Web hosting services, including the existence and amount of any fee applicable to money-back guarantees. It also requires Network Solutions to refund the full purchase price of Web hosting sold under a money back guarantee, in response to a request that complies with the terms of that guarantee, unless any applicable fees are disclosed clearly and conspicuously. Section II of the proposed Order broadly prohibits misrepresentations with regard to refund or cancellation policies or any other material fact concerning the Web hosting services that Network Solutions offers or sells. Sections III through VI of the proposed Order are standard reporting and compliance provisions that allow the Commission to better monitor Network Solutions' ongoing compliance with the Order. Under Section VII, the Order will expire in twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed Order. It is not intended to constitute an official interpretation of the Complaint or proposed Order, or to modify in any way the proposed Order's terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2015–08386 Filed 4–10–15; 8:45 am]

**BILLING CODE 6750–01–P**

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Federal Child Support Portal Registration.

*OMB No.:* 0970–0370.

*Description:* The federal Office of Child Support Enforcement, Division of Federal Systems, maintains the Child Support Portal, which contains a variety of child support applications to help enforce state child support cases. To securely access the child support applications, authorized users must register to use the Child Support Services Portal. Information collected from the registration form is used to authenticate and authorized users.

The federal Child Support Portal Registration information collection activities are authorized by 42 U.S.C. 653(m)(2), which requires the Secretary to establish and implement safeguards to restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and to restrict use of such information to authorized purposes.

*Respondents:* Employers, Financial Institutions, Insurers, and State Agencies

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Registration Screens | 183 | 1 | 0.15 | 27.45 |

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.

Copies of the proposed collection of information can be obtained an comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2015–08397 Filed 4–10–15; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–N–1082]**

### Preparation for International Conference on Harmonization Steering Committee and Expert Working Group Meetings in Fukuoka, Japan; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a regional public meeting entitled ''Preparation for ICH Steering Committee and Expert Working Group Meetings in Fukuoka, Japan'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Fukuoka, Japan. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Fukuoka, Japan, scheduled on June 6 through 11, 2015, at which the discussion of the topics underway and ICH reforms will continue.

**DATES:** The public meeting will be held on May 15, 2015, from 1 p.m. to 4 p.m. Registration to attend the meeting and requests for oral presentations must be received by May 11, 2015. See the **SUPPLEMENTARY INFORMATION** section for information on how to register for the meeting.

**ADDRESSES:** The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, Great Room (Rm. 1503 A), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit either electronic or written comments by June 14, 2015. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Tracy Porter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1173, Silver Spring, MD 20993, 301–796–7789, FAX: 301–847–8443, email: *tracy.porter@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory Agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. Members of the ICH Steering Committee include the European Union; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor, and Welfare; the Japanese Pharmaceutical Manufacturers Association; FDA; the Pharmaceutical Research and Manufacturers of America; Health Canada; Swissmedic; and the World Health Organization (as an Observer). The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the ICH regions over the past two decades.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

## II. Meeting Attendance and Participation

*A. Registration*

If you wish to attend the meeting, visit *https://www.eventbrite.com/e/international-conference-on-harmonization-regional-public-meeting-tickets-16183519342.* Please register for the meeting by May 11, 2015. Seating may be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meetings will be based on space availability.

If you need special accommodations because of a disability, please contact Tracy Porter (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

*B. Requests for Oral Presentations*

Interested persons may present data, information, or views orally or in writing on issues pending at the public meeting. Public oral presentations will be scheduled between approximately 3:30 p.m. and 4 p.m. Time allotted for oral presentations may be limited to 5 minutes. Those desiring to make oral presentations should notify Tracy Porter (see **FOR FURTHER INFORMATION CONTACT**) by May 11, 2015, and submit a brief statement of the general nature of the evidence or arguments they wish to present; the names and addresses, telephone number, fax, and email of proposed participants; and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm439475.htm.*

## III. Comments

Interested persons may submit either electronic or written comments to the public docket (see **ADDRESSES**) by June 14, 2015. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

## IV. Transcripts

Please be advised that as soon as a meeting transcript is available, FDA will post it at *http://www.fda.gov/Drugs/NewsEvents/ucm439475.htm.*

Dated: April 7, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08359 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–D–0363]**

### Expedited Access for Premarket Approval and De Novo Medical Devices Intended for Unmet Medical Need for Life Threatening or Irreversibly Debilitating Diseases or Conditions; Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the availability of the guidance entitled ''Expedited Access for Premarket Approval and De Novo Medical Devices Intended for Unmet Medical Need for Life Threatening or Irreversibly Debilitating Diseases or Conditions.'' This guidance outlines FDA's new, voluntary program for certain medical devices that demonstrate the potential to address unmet medical needs for life threatening or irreversibly debilitating diseases or conditions and that are subject to premarket approval (PMA) applications or de novo classifications. FDA believes that the Expedited Access Pathway (EAP) program will help patients have more timely access to these medical devices by expediting their development, assessment, and review, while preserving the statutory standard of reasonable assurance of safety and effectiveness for premarket approval, consistent with the Agency's mission to protect and promote public health. The document also discusses how the EAP program approaches the balance of premarket and postmarket data collection and incorporates a benefit-risk framework. The EAP program will become effective April 15, 2015.

**DATES:** Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

**ADDRESSES:** An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Expedited Access for Premarket Approval and De Novo Medical Devices Intended for Unmet Medical Need for Life Threatening or

Irreversibly Debilitating Diseases or Conditions'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Aaron Josephson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5449, Silver Spring, MD 20993–0002, 301–796–5178; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA's EAP program contains features from the Center for Devices and Radiological Health's (CDRH's) Innovation Pathway, piloted in 2011 to facilitate the development and expedite the review of breakthrough technologies. In addition, the EAP program is based in part on FDA's experience with the Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research programs that are intended to facilitate and expedite development and review of new drugs to address unmet medical needs in the treatment of serious or life-threatening conditions (''FDA drug-expedited programs''). However, while the EAP program incorporates some features of the FDA drug-expedited programs, it is a separate and distinct program tailored to devices and intended to further speed the availability of certain safe and effective devices that address unmet public health needs.

As part of the EAP program, FDA intends to provide more interactive communications during device development and more interactive review of Investigational Device Exemption applications, PMA applications, and requests for de novo review. This includes working with the sponsor to create a data development plan specific to the device, which would outline all data the sponsor intends to collect in support of device approval, and identifying what data would be collected premarket and postmarket. In addition, FDA intends to work interactively with the sponsor within the benefit-risk framework discussed in the FDA guidance, ''Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Approvals and De Novo Classifications,'' issued on March 28, 2012, and in accordance with statutory and regulatory requirements, to determine whether certain data may be collected in the postmarket setting rather than in the premarket setting for devices subject to PMAs. This guidance details the EAP process, which will only be utilized at the request of the sponsor and with FDA's agreement.

At the time of this document's publication, FDA does not know whether the EAP program will require a significant increase in resources. FDA will devote as many resources to EAP as possible without adversely impacting our ability to meet our Medical Device User Fee Act commitments. Our experience with the Innovation Pathway showed that early and more extensive interactions with sponsors can consume a significant amount of manager and staff time. FDA plans to closely monitor implementation of EAP to determine whether we have sufficient resources to effectively implement the program.

A draft of this guidance was made available in the **Federal Register** on April 23, 2014, and the comment period closed July 22, 2014. Changes between the draft and final versions of this guidance include expanding the scope to include de novo requests, an increased focus on patient benefits, a clarification of how FDA will allocate resources to the EAP program, and a clarified explanation of the EAP designation process. FDA also provided more examples to help industry better understand in which cases EAP may be the most appropriate pathway to device approval. The final guidance also recognizes the potential for use of registry data to satisfy post-approval study requirements and adds an evaluation mechanism for the EAP program.

The EAP program will become effective April 15, 2015.

## II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the Expedited Access PMA program. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov/* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Expedited Access for Premarket Approval Medical Devices Intended for Unmet Medical Need for Life Threatening or Irreversibly Debilitating Diseases or Conditions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400007 to identify the guidance you are requesting.

## IV. 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 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 822 have been approved under OMB control number 0910–0449; and the collections of information regarding ''Requests for Feedback on Medical Device Submissions'' have been

approved under OMB control number 0910–0756.

**V. Comments**

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: April 7, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08364 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–E–0475]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; ELVITEGRAVIR

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for ELVITEGRAVIR (as a component of STRIBILD) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product ELVITEGRAVIR (as a component of STRIBILD (cobicistat/emtricitabine/ELVITEGRAVIR/tenofovir disoproxil fumarate)). STRIBILD is indicated as a complete regimen for the treatment of HIV–1 infection in adults who are antiretroviral treatment-naive. Subsequent to this approval, the USPTO received a patent term restoration application for ELVITEGRAVIR (as a component of STRIBILD) (U.S. Patent No. 7,176,220) from Japan Tobacco Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 10, 2013, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of STRIBILD represented the first permitted commercial marketing or use of the ELVITEGRAVIR product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ELVITEGRAVIR (as a component of STRIBILD) is 2,666 days. Of this time, 2,360 days occurred during the testing phase of the regulatory review period, while 306 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 12, 2005. The applicant claims May 18, 2005, as the date the investigational new drug application (IND) for ELVITEGRAVIR became effective. However, FDA records indicate that the IND effective date was May 12, 2005, which was the date the IND sponsor was notified that clinical trials may proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* October 27, 2011. The applicant claims October 26, 2011, as the date the new drug application (NDA) for STRIBILD (NDA 203–100) was initially submitted. However, FDA records indicate that NDA 203–100 was submitted on October 27, 2011.

3. *The date the application was approved:* August 27, 2012. FDA has verified the applicant's claim that NDA 203–100 was approved on August 27, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,021 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 12, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 13, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic

petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 7, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08362 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–D–0090]**

### Balancing Premarket and Postmarket Data Collection for Devices Subject to Premarket Approval; Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Balancing Premarket and Postmarket Data Collection for Devices Subject to Premarket Approval.'' This guidance clarifies FDA's current policy on balancing premarket and postmarket data collection during the Agency's review of premarket approval applications (PMA). Specifically, this guidance outlines how FDA considers the role of postmarket information in determining the appropriate type and amount of data that should be collected in the premarket setting to support premarket approval, while still meeting the statutory standard of safety and effectiveness. FDA believes this guidance will improve patient access to safe and effective medical devices that are important to public health by improving the predictability, consistency, transparency, and efficiency of the premarket process.

**DATES:** Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

**ADDRESSES:** An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Balancing Premarket and Postmarket Data Collection for Devices Subject to Premarket Approval'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Aaron Josephson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5449, Silver Spring, MD 20993–0002, 301–796–5178; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA has long applied postmarket controls as a way to reduce premarket data collection, where appropriate, while assuring that the statutory standard for approval of reasonable assurance of safety and effectiveness is still met. The right balance of premarket and postmarket data collection facilitates timely patient access to important new technology without undermining patient safety.

In this guidance, FDA describes existing statutory requirements under the Federal Food, Drug, and Cosmetic Act, its implementing regulations, and FDA policies that support the policy on balancing premarket and postmarket data collection during review of PMAs. In addition, FDA clarifies how the Agency considers postmarket data as part of the benefit-risk framework described in FDA's guidance ''Factors to Consider When Making Benefit-Risk Determinations in Medical Device Premarket Approval and De Novo Classifications,'' issued on March 28, 2012. This guidance provides a resource for industry and FDA staff on how FDA determines when it is appropriate for a sponsor of a PMA to collect some data (clinical or non-clinical) in the postmarket setting, rather than premarket.

A draft of this guidance was made available in the **Federal Register** on April 23, 2014, and the comment period closed July 22, 2014. Changes between the draft and final versions of this guidance include an increased focus on patient outcomes and additional examples to help industry better understand when it may be appropriate to shift data collection from the premarket to postmarket setting. The final guidance also recognizes the potential for use of registry data to satisfy post-approval study requirements.

#### II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on balancing premarket and postmarket data collection for devices subject to premarket approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

#### III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Balancing Premarket and Postmarket Data Collection for Devices Subject to Premarket Approval'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1833 to

identify the guidance you are requesting.

### IV. 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 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 822 have been approved under OMB control number 0910–0449; the collection of information in 21 CFR part 860, subpart C have been approved under OMB control number 0910–0138; and the collections of information in the guidance document regarding requests for feedback on medical device submission have been approved under OMB control number 0910–0756.

### V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: April 7, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08363 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–2294]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Evaluation of the Food and Drug Administration's 'Fresh Empire' Multicultural Youth Tobacco Prevention Campaign

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) 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 May 13, 2015.

**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–NEW and title ''Evaluation of the Food and Drug Administration's 'Fresh Empire' Multicultural Youth Tobacco Prevention Campaign.'' Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *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.

### Evaluation of the Food and Drug Administration's 'Fresh Empire' Multicultural Youth Tobacco Prevention Campaign (OMB Control Number 0910–NEW)

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by minors. Section 1003(d)(2)(D) of the FD&C Act (21 U.S.C. 393(d)(2)(D)) supports the development and implementation of FDA public education campaigns related to tobacco use. Accordingly, FDA is currently developing and implementing a youth-targeted public education campaign ('Fresh Empire') to help prevent tobacco use among multicultural youth and thereby reduce the public health burden of tobacco. The campaign will feature events, advertisements on television and radio and in print, digital communications including social media, and other forms of media.

In support of the provisions of the Tobacco Control Act that require FDA to protect the public health and to reduce tobacco use by minors, FDA requests OMB approval to collect information needed to evaluate FDA's 'Fresh Empire' multicultural youth tobacco prevention campaign. Comprehensive evaluation of FDA's public education campaigns is needed to ensure campaign messages are effectively received, understood, and accepted by those for whom they are intended. Evaluation is an essential organizational practice in public health and a systematic way to account for and improve public health actions.

FDA plans to evaluate the effectiveness of its multicultural youth tobacco prevention campaign through an outcome evaluation study that will be designed to follow the multiple, discrete waves of media advertising planned for the campaign.

The outcome evaluation study consists of a pre-test survey of multicultural youth aged 12 to 17 before campaign launch. The pre-test survey will be followed by ongoing cross-sectional surveys of the target audience of youth beginning approximately 3 months following campaign launch. Information will be collected about youth awareness of and exposure to campaign events and advertisements and about tobacco-related knowledge, attitudes, beliefs, intentions, and use. Information will also be collected on demographic variables including age, sex, race/ethnicity, grade level, and primary language.

All information will be collected through in-person and Web-based questionnaires. Youth respondents will be recruited from two sources: (1) A sample drawn from 30 U.S. media markets gathered using an address-based postal mail sampling of U.S. households for the outcome evaluation studies and (2) targeted social media

(*e.g.,* Facebook). Participation in the study is voluntary.

The information collected is necessary to inform FDA's efforts and measure the effectiveness and public health impact of the campaign. Data will be used to estimate awareness of and exposure to the campaign among youth in target markets where the campaign is active. Data will also be used to examine statistical associations between exposure to the campaign and subsequent changes in specific outcomes of interest, which will include knowledge, attitudes, and beliefs, related to tobacco use.

FDA's burden estimate is based on prior experience with in-person and Internet panel studies similar to the Agency's plan presented in this document. Since the 60-day notice published, FDA has revised the estimated burden. The original burden estimate accounted for evaluation of more than one FDA multicultural campaign. The current burden estimate accounts for the evaluation of one campaign, FDA's 'Fresh Empire' Youth Tobacco Prevention Campaign.

A mail-based screener will be one of the methods used to identify eligible youth. Parents or guardians will be asked to provide consent and their contact information on this form. For the pre-launch survey, the 5-minute screener will be completed by 13,816 households for a total of 1,151 burden hours for youth and an additional 230 hours for the parents or guardians. For the pre-test survey, 2,100 youth will complete a questionnaire with an estimated burden of 30 minutes per respondent, for an annualized total of 1,050 hours. For the post-test screening survey, the estimated burden is 3,453 hours for youth and 691 hours for adults. For the post-test surveys, the estimated burden is 45 minutes per respondent, for a total of 4,725 burden hours.

We will also recruit youth through social media (*e.g.,* Facebook, Twitter) as a secondary strategy to recruit youth 13 to 17. An online version of the screener described above will be used to identify eligible youth (included in Attachment 3). Eligible youth will be asked to provide their parents' or guardians' contact information. The screener will take 5 minutes and will be completed by 2,500 youth for the pre-test survey for a total of 208 burden hours. Of these, 500 will be eligible and complete the pre-test survey for a total of 250 burden hours. For the post-test survey, 10,500 youth will complete the 5-minute screener, for 875 burden hours. Of these, 2,100 will be eligible and complete the post-test survey online (up to 45 minutes), for a total of 1,575 burden hours.

The target number of completed campaign questionnaires for all respondents is 134,528, and the annualized response burden is estimated at 14,208 hours.

In the **Federal Register** of January 5, 2015 (80 FR 230), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two comments were received, however, only one was PRA related.

Comment: One comment stated that the media tracking survey and the outcome evaluation study proposed by FDA are critical to FDA's efforts to develop and implement an effective multicultural youth tobacco prevention campaign.

Response: FDA agrees that this collection of information is necessary to the Agency's efforts to promote and improve public health.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Type of respondent | Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| Youth aged 12 to 17 in the United States. | Screener and Consent Process—Pre-test outcome survey. | 13,816 | 1 | 13,816 | 0.0833 (5 min.) ..... | 1,151 |
| Adults 18 and older in the United States. | Screener and Consent Process—Pre-test outcome survey. | 13,816 | 1 | 13,816 | 0.0166 (1 min.) ..... | 230 |
| Youth aged 12 to 17 in the United States. | Screener and Consent Process—post-test outcome survey. | 41,448 | 1 | 41,448 | 0.0833 (5 min.) ..... | 3,453 |
| Adults 18 and older in the United States. | Screener and Consent Process—post-test outcome survey. | 41,448 | 1 | 41,448 | 0.01666 (1 min.) ... | 691 |
| Multicultural Youth aged 12–17 in select media markets. | Pre-test outcome evaluation survey. | 2,100 | 1 | 2,100 | 0.5 (30 min.) ..... | 1,050 |
| | Post-test evaluation survey | 6,300 | 1 | 6,300 | 0.75 (45 min.) ..... | 4,725 |
| Multicultural youth aged 13–17 in the select media markets recruiting through social media. | Pre-test online screener ..... | 2,500 | 1 | 2,500 | 0.0833 (5 min.) ..... | 208 |
| | Pre-test online survey ..... | 500 | 1 | 500 | 0.5 (30 min.) ..... | 250 |
| | Post-test online screener .... | 10,500 | 1 | 10,500 | 0.0833 (5 min.) ..... | 875 |
| | Post-test online survey ..... | 2,100 | 1 | 2,100 | 0.75 (45 min.) ..... | 1,575 |
| Total ..... | ..... | 134,528 | ..... | ..... | ..... | 14,208 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 8, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08466 Filed 4–10–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–0990–0391–30D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for reinstatement of a previously-approved information collection assigned OMB control number 0990–0391, which expired on March 31, 2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before May 13, 2015.

**ADDRESSES:** Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.Collection Clearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0391–30D for reference.

**Information Collection Request Title: The Hospital Preparedness Program**

*OMB No.:* 0990–0391.

*Abstract:* The Science Healthcare Preparedness Evaluation and Research (SHARPER), part of the Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and Response (ASPR), Office of Emergency Management (OEM), Division of National Healthcare Preparedness Programs (NHPP), in conjunction with the Hospital Preparedness Program (HPP) is seeking a reinstatement with change on a currently approved clearance by the Office of Management of Budget (OMB) for a Generic Data Collection Form to serve as the cornerstone of its effort to assess awardee program under the HPP Cooperative Agreement (CA) Program. Program data are gathered from awardees as part of their Ad-hoc and End-of-Year Progress Reports and other similar information collections (ICs) which have the same general purpose, account for awardee spending and program on all activities conducted in pursuit of achieving the HPP Grant goals.

This data collection effort is crucial to HPP's decision-making process regarding the continued existence, design and funding levels of this program. Results from these data analyses enable HPP to monitor healthcare emergency preparedness and progress towards national preparedness goals. HPP supports priorities outlined by the National Preparedness Goal (the Goal) established by the Department of Homeland Security (DHS) in 2005. The Goal guides entities at all levels of government in the development and maintenance of capabilities to prevent, protect against, respond to and recover from major events. Additionally, the Goal will assist entities at all levels of government in the development and maintenance of the capabilities to identify, prioritize and protect critical infrastructure.

Likely Respondents: Hospital Preparedness Program Awardees.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Data collection activity | Number of respondents | Number of responses | Response time (hours) | Total annual burden hours (for all awardees) | 3-Year total (for all awardees) |
|---|---|---|---|---|---|
| Generic and Future Program Data Information Collection(s) | 62 | 1 | 58 | 3,596 | |
| Total | | | | 3,596 | 10,788 |

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2015–08298 Filed 4–10–15; 8:45 am]

**BILLING CODE 4150–37–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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) 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.

**Proposed Project: Primary and Behavioral Health Care Integration Program (OMB No. 0930–0340)—Revision**

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services, (CMHS) is requesting a revision from the Office of Management and Budget (OMB) for data collection activities associated with their Primary and Behavioral Health Care Integration

(PBHCI) Program. Specifically, SAMHSA is requesting approval to only collect information on grantee quarterly reports.

The purpose of the PBHCI grant program is to improve the overall wellness and physical health status of people with serious mental illnesses (SMI), including individuals with co-occurring substance use disorders, by supporting communities to coordinate and integrate primary care services into publicly-funded community mental health and other community-based behavioral health settings. The program's goal is to improve the physical health status of adults with serious mental illnesses (and those with co-occurring substance use disorders) who have or are at risk for co-occurring primary care conditions and chronic diseases. The program's objective is to support the triple aim of improving the health of those with SMI; enhancing the client's experience of care (including quality, access, and reliability); and reducing/controlling the per capita cost of care.

New questions added to the quarterly report will include information on the selected evidence based practices (EBPs) for nutrition and tobacco cessation (including the number of participants and their outcomes), identifying the selected blood pressure treatment protocol (one of four recommended by the Centers for Disease Control and Prevention), and updating the chart on the identified sub-population(s) on physical health indicators in the disparities impact statement section of the quarterly report.

This information collection is needed to provide SAMHSA with sufficient information to monitor grantee performance and to assess whether integrated primary care services produce improvements in the physical health of the SMI population receiving services from community-based behavioral health agencies.

Collection of the information included in this request is authorized by Section 505 of the Public Health Service Act (42 U.S.C. 290aa–4)—Data Collection. Authorization for the PBHCI program is provided under Section 5604 of H.R. 3590, the Affordable Care Act (ACA), which authorizes SAMHSA to provide awards for the co-location of primary and specialty care in community-based mental health settings.

The table below reflects the annualized hourly burden.

| Instrument | Number of respondents | Responses per respondent | Total responses | Hours per response per respondent | Total hour burden |
|---|---|---|---|---|---|
| Grantee Quarterly Report | 172 | 4 | 688 | 2 | 1376 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by June 12, 2015.

**Summer King,**

*Statistician.*

[FR Doc. 2015–08358 Filed 4–10–15; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 10, 2014.

**DATES:** *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on September 10, 2014. The next triennial inspection date will be scheduled for September 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1000 Port Carteret Dr., Building C, Carteret, NJ 07008, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|---|---|
| 1 | Vocabulary. |
| 3 | Tank gauging. |
| 7 | Temperature determination. |
| 8 | Sampling. |
| 12 | Calculations. |
| 17 | Maritime measurement. |

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–08 | ASTM D–86 | Standard test method for distillation of petroleum products at atmospheric pressure. |
| 27–48 | ASTM D–4052 | Standard test method for density and relative density of liquids by digital density meter. |
| 27–58 | ASTM D–5191 | Standard test method for vapor pressure of petroleum products (mini-method). |
| 27–50 | ASTM D–93 | Standard test methods for flash point by Penske-Martens Closed Cup Tester. |
| 27–07 | ASTM D–4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–11 | ASTM D–445 | Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity). |
| Pending | ASTM D–3606 | Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography. |
| Pending | ASTM D–5599 | Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection. |
| Pending | ASTM D–5769 | Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry. |
| 27–53 | ASTM D–2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge. |
| 27–01 | ASTM D–287 | Standard test method for API gravity of crude petroleum and petroleum products (hydrometer method). |
| 27–06 | ASTM D–473 | Standard test method for sediment in crude oils and fuel oils by the extraction method. |
| 27–13 | ASTM D–4294 | Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry. |
| 27–04 | ASTM D–95 | Standard test method for water in petroleum products and bituminous materials by distillation. |
| 27–46 | ASTM D–5002 | Standard test method for density and relative density of crude oils by digital density analyzer. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 2, 2015.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2015–08188 Filed 4–10–15; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt, LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt, LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt, LP, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 7, 2014.

**DATES:** *Effective Dates:* The accreditation and approval of Saybolt, LP, as commercial gauger and laboratory became effective on August 7, 2014. The next triennial inspection date will be scheduled for August 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt, LP, 2321 Burnett Blvd., Wilmington, NC 28401, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Saybolt, LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|---|---|
| 3 | Tank gauging. |
| 7 | Temperature determination. |
| 8 | Sampling. |
| 9 | Density Determination. |
| 12 | Calculations. |
| 17 | Maritime measurement. |

Saybolt, LP is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–02 | D 1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27–06 | D 473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–08 | D 86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–11 | D 445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity). |
| 27–13 | D 4294 | Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry. |
| 27–48 | D 4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–54 | D 1796 | Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure). |
| 29–02 | D 3798 | Standard Test Method for Analysis of p-Xylene by Gas Chromatography. |
| 29–19 | D 4128 | Recommended Guidelines for the Analysis of Organic Chemicals and Mixtures by Gas Chromatography and Gas Chromatography/Mass Spectrometry. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 2, 2015.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2015–08189 Filed 4–10–15; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation of Nexeo Solutions LLC, as a Commercial Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation of Nexeo Solutions LLC, as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Nexeo Solutions LLC, has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 24, 2014.

**DATES:** *Effective Dates:* The accreditation of Nexeo Solutions LLC, as commercial laboratory became effective on September 24, 2014. The next triennial inspection date will be scheduled for September 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 that Nexeo Solutions LLC, 1404 S. Houston Rd., Pasadena, TX 77502, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

Nexeo Solutions LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–01 | D 287 | API Gravity of crude Petroleum and Petroleum products (Hydrometer Method). |
| 27–04 | D 95 .. | Standard test method for water in petroleum products and bitumous materials by distillation. |
| 27–05 | D 4928 | Standard test method for water in crude oils by Coulometric Karl Fischer Titration. |
| 27–06 | D 473 | Standard test method for sediment in crude oils and fuel oils by extraction method. |
| 27–07 | D 4807 | Standard test method for sediment in crude oil by membrane filtration. |
| 27–08 | D 86 .. | Standard test method for distillation of petroleum products. |
| 27–11 | D 445 | Standard test method of kinematic viscosity of transparent and opaque liquids. |
| 27–13 | D 4294 | Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry. |
| 27–48 | D 4052 | Standard test method for density and relative density of liquids by digital density meter. |
| 27–50 | D 93 .. | Standard test method for flash point by Pensky Martin Closed Cup Tester. |
| 29–01 | D 3797 | Test method for analysis of o-Xylene by Gas Chromatography. |
| 29–02 | D 3798 | Test method for Analysis of p-Xylene by Gas Chromatography. |

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 2, 2015.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2015–08190 Filed 4–10–15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R7–R–2015–N026; FXRS12650700000–134–FF07R06000]**

### Record of Decision for the Arctic National Wildlife Refuge Final Comprehensive Conservation Plan/ Final Environmental Impact Statement; Fairbanks, Alaska

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

**ACTION:** Notice of availability; Record of Decision.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Record of Decision (ROD) for the Arctic National Wildlife

Refuge Final Comprehensive Conservation Plan (CCP) and Final Environmental Impact Statement (EIS). We prepared this ROD pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations. The Service is furnishing this notice to advise the public and other agencies of our decision and of availability of the ROD.

**DATES:** The ROD was signed on April 3, 2015.

**ADDRESSES:** You may view the ROD and final CCP/EIS by any of the following methods:

*Web site:* Download a copy of the document(s) at *http://www.fws.gov/refuge/arctic/ccp.html.*

*Email: arcticrefugeccp@fws.gov;* include ''Arctic National Wildlife Refuge final CCP/EIS ROD'' in the subject line of the message for an electronic copy.

*Fax:* Attn: Stephanie Brady, Project Team Leader, (907) 786–3901.

*U.S. Mail:* Stephanie Brady, Project Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503.

*In-Person Viewing or Pickup:* You may view or pick up a copy of the ROD and final CCP/EIS (on Compact Disc) during regular business hours at the address listed above.

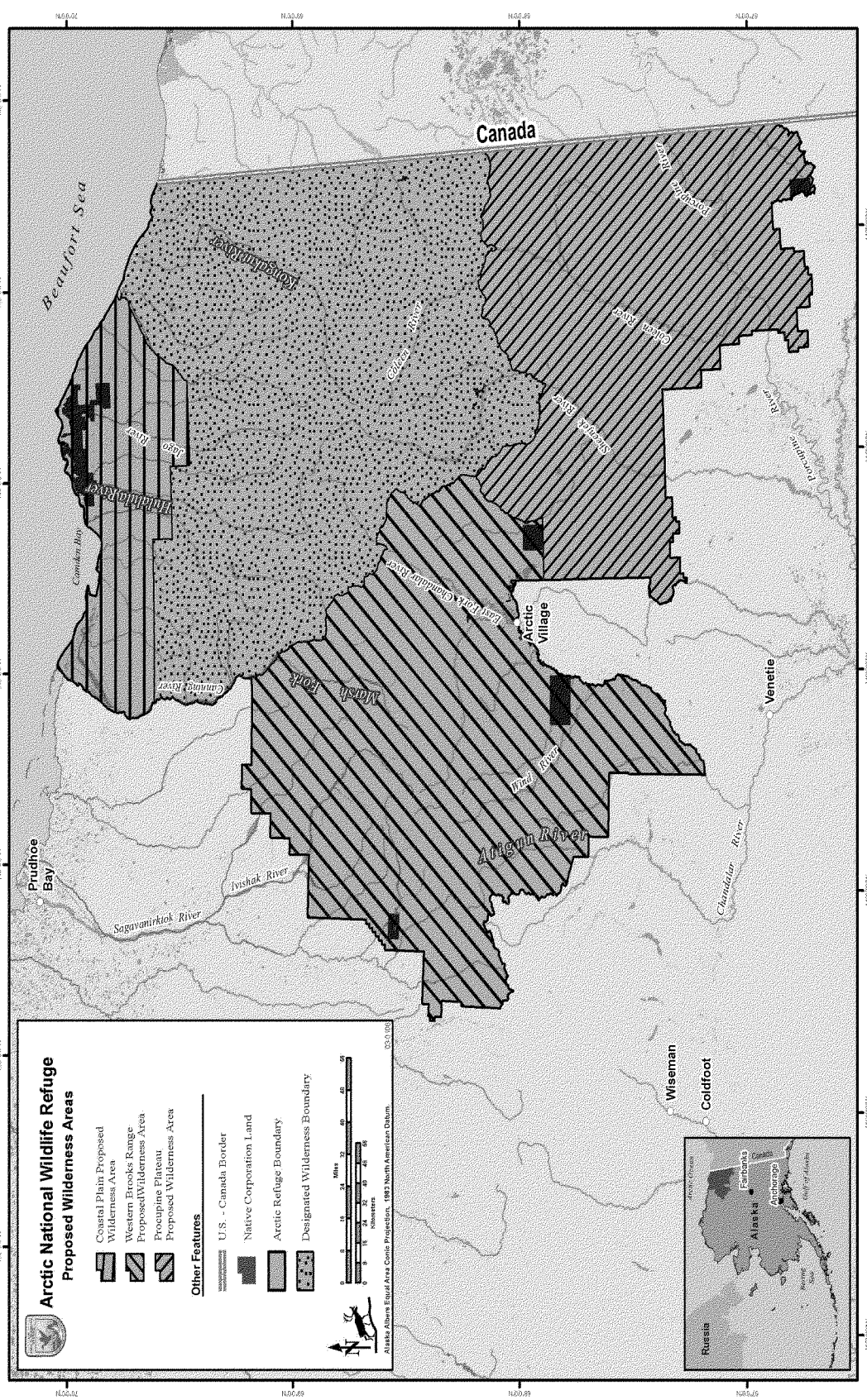
**FOR FURTHER INFORMATION CONTACT:** Stephanie Brady, (907) 306–7448, or at one of the addresses above.

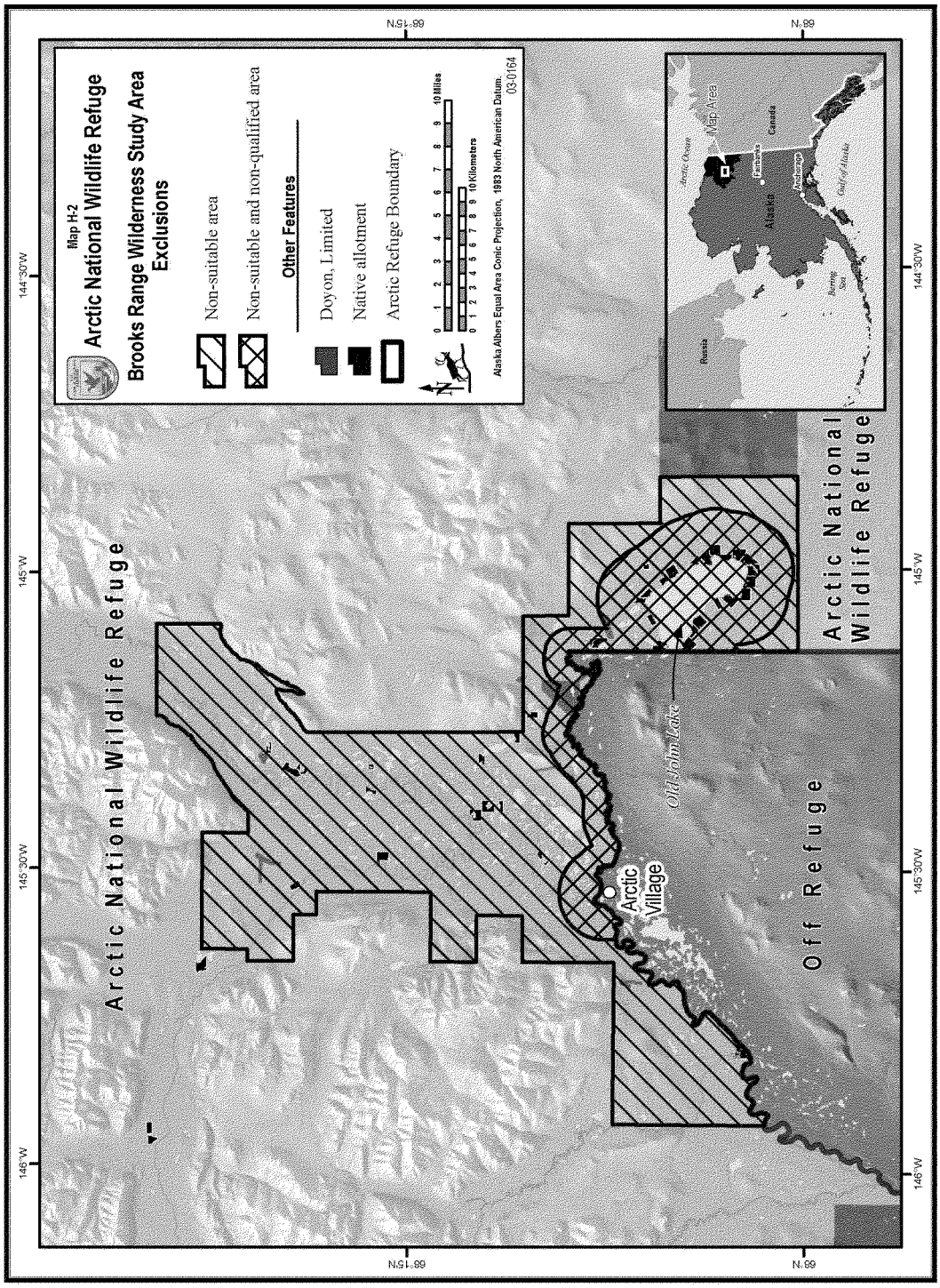
**SUPPLEMENTARY INFORMATION:** With this notice, we finalize the CCP/EIS process for Arctic National Wildlife Refuge (Refuge), Alaska. In accordance with National Environmental Policy Act (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final CCP/EIS for Arctic Refuge. The final CCP/EIS provides broad policy guidance and establishes management direction for Arctic Refuge for the next 15 years. For further information about our decision-making process, see our notice of availability of our revised comprehensive conservation plan and final environmental impact statement, which published in the **Federal Register** on January 27, 2015 (80 FR 4303).

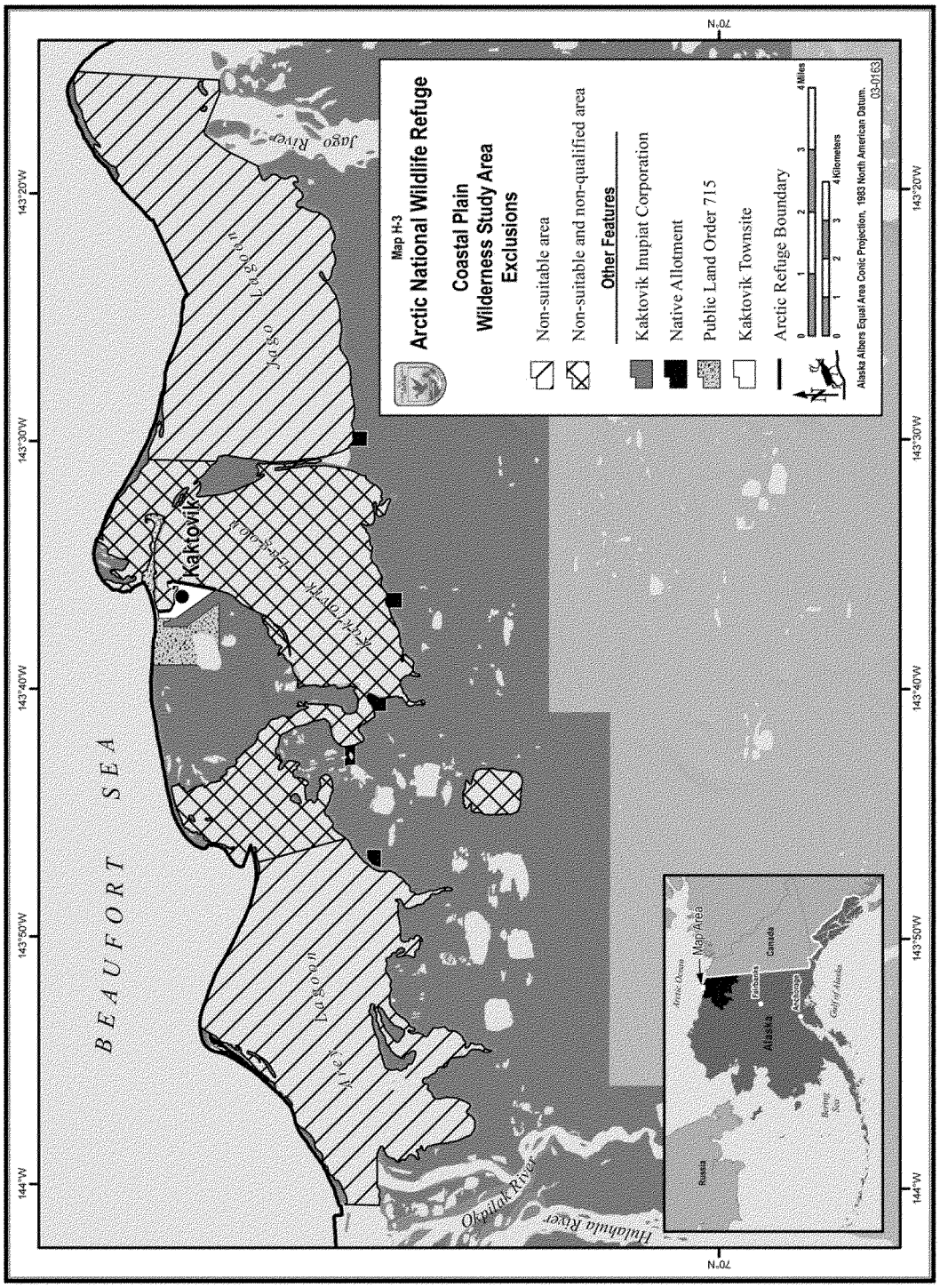
The ROD documents our selection of Alternative E (the Preferred Alternative) as described in the Final Revised Conservation Plan and Environmental Impact Statement for Arctic Refuge. Alternative E reflects the intent to manage Arctic Refuge to achieve the mission of the National Wildlife Refuge System and meet the purposes for which the Refuge was established. Alternative E conserves the fish, wildlife, and habitats of Arctic Refuge and facilitates subsistence and recreation in settings that emphasize natural, unaltered landscapes. Alternative E also emphasizes natural processes across the Refuge. Large-scale changes to the landscape are not anticipated.

This decision recommends approximately 12.28 million existing acres of Arctic Refuge for Wilderness designation. This recommendation will remain in effect unless withdrawn or until revised or submitted to Congress. Only Congress can make the final decision to designate Wilderness. This ROD also recommends that four of the Refuge's rivers be included in the National Wild and Scenic Rivers System. Designation of a wild and scenic river requires an Act of Congress. The maps below show the proposed wilderness areas, and exclusions from the proposed wilderness areas, which are defined in greater detail in the Service's Wilderness Review, EIS Appendix H. The proposed additions to the National Wild and Scenic Rivers System are described in the Service Wild and Scenic River Review, EIS Appendix I.

BILLING CODE 4310–55–P


Arctic National Wildlife Refuge
Proposed Wilderness Areas
Coastal Plain Proposed Wilderness Area
Western Brooks Range Proposed Wilderness Area
Porcupine Plateau Proposed Wilderness Area
Other Features
U.S. - Canada Border
Native Corporation Land
Arctic Refuge Boundary
Designated Wilderness Boundary
Alaska Albers Equal Area Conic Projection, 1983 North American Datum
Beaufort Sea
Canada
Prudhoe Bay
Arctic Village
Venetie
Wiseman
Coldfoot
Fairbanks
Anchorage
Alaska
Russia
Canada
Camden Bay
Jago River
Hulahula River
Okpilak River
Aichilik River
Canning River
Sagavanirktok River
Ivishak River
Marsh Fork
Chandalar River
Porcupine River
Coleen River
Sheenjek River
Wind River
Atigun River
East Fork Chandalar River


Map H-2
Arctic National Wildlife Refuge
Brooks Range Wilderness Study Area
Exclusions
Non-suitable area
Non-suitable and non-qualified area
Other Features
Doyon, Limited
Native allotment
Arctic Refuge Boundary
0 1 2 3 4 5 6 7 8 9 10 Miles
0 1 2 3 4 5 6 7 8 9 10 Kilometers
Alaska Albers Equal Area Conic Projection, 1983 North American Datum.
03-0164
Arctic National Wildlife Refuge
Off Refuge
Arctic National Wildlife Refuge
Old John Lake
Arctic Village
Map Area
Alaska
Canada
Russia
Fairbanks
Anchorage
Arctic Ocean
Gulf of Alaska
Bering Sea
68°15'N
68°N
144°30'W
145°W
145°30'W
146°W

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## Introduction

Under Section 303(2) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the purposes for which the Arctic Refuge was established and shall be managed include:

(i) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and arctic char and grayling;

(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents, and

(iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

Section 304(g) of ANILCA directs the Secretary of the Interior to prepare and,

from time to time, revise a plan for each refuge in Alaska. The Plan is based on an identification and description of resources of the Arctic Refuge, including fish and wildlife resources and wilderness values, and must:

(i) Designate areas within the refuge according to their respective resources and values;

(ii) specify the programs for conserving fish and wildlife and the programs relating to maintaining the identified values proposed to be implemented within each such area; and

(iii) specify the uses within each such area which may be compatible with the major purposes of the refuge.

The Plan must also set forth those opportunities which will be provided within the refuge for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of refuge resources and values, if such recreation, research, education, and interpretation is compatible with the purposes of the refuge.

This Plan revision process implements ANILCA; the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997; the National Environmental Policy Act of 1969 (NEPA), as amended; other Federal laws, and the Service Planning Policy (602 FW 1–3). According to ANILCA, the National Wildlife Refuge System Improvement Act of 1997, NEPA, and Service planning policy, the Service must ensure adequate and effective interagency coordination and public participation during the planning process. Interested and affected parties such as State agencies, tribal governments, Native organizations, non-governmental organizations, and local and national residents who may be affected by decisions in the Plan must be provided meaningful opportunities to present their views.

The purpose of this planning process was to revise the Refuge's original Plan, which was approved and adopted in 1988. The 1988 Plan contained no goals or objectives and had outdated management direction. In the Refuge planning process, the Service identified and analyzed significant issues to objectively consider a wide range of approaches that could be taken to address each issue. Three significant planning issues were identified by the Service for consideration during revision of the Plan:

1. Should one or more areas of the Refuge be recommended for Wilderness designation?

2. Should additional wild and scenic rivers be recommended for inclusion in the National Wild and Scenic Rivers System?

3. How will the Refuge manage Kongakut River visitor use to protect resources and visitor experience?

The Revised Plan is designed to provide broad policy guidance and establishes management direction for Arctic Refuge for the next 15 years. It describes how the Service will conserve fish, wildlife, plants, and their habitats, while providing opportunities for subsistence and for wildlife-dependent recreational uses. The Revised Plan includes a vision statement for Refuge management; short/long-term goals and objectives to guide management activities on Refuge lands and waters; and a description of uses that are appropriate and compatible with the Refuge's purposes and the mission of the National Wildlife Refuge System. The Revised Plan is designed to be a dynamic, living document that will require monitoring and periodic reviews and updates.

The process of developing this Revised Plan has allowed the Service to:

- Ensure that the purposes of the Refuge and the mission of the Refuge System are fulfilled;
- Establish a long-term vision for the Refuge;
- Establish management goals and objectives;
- Define compatible uses;
- Update management direction related to national and regional policies and guidelines used to implement Federal laws governing Refuge management;
- Describe and maintain the resources and special values of Arctic Refuge;
- Incorporate new scientific information on factors affecting Refuge resources as well as surrounding areas, including climate change;
- Evaluate current Refuge management direction based on changing public use of the Refuge and its resources;
- Ensure that opportunities are available for interested parties to participate in the development of management direction;
- Provide a systematic process for making and documenting resource management decisions;
- Establish broad management direction for Refuge programs and activities;
- Provide continuity in Refuge management;
- Provide additional guidance for budget requests; and
- Provide additional guidance for planning work and evaluating accomplishments.

**Alternatives Considered**

Six alternatives were considered in detail in the Revised Plan and final EIS. Five of the six alternatives included the proposed goals and objectives and the revised management policies and guidelines described in Chapter 2 of the Revised Plan. The six alternatives considered three significant planning issues: Wilderness recommendations, wild and scenic river recommendations, and Kongakut River visitor use management.

*Alternative A: Current Management (No Action)*

Alternative A provides the baseline against which the other alternatives were compared. Under Alternative A, the Refuge would continue to be managed according to the direction included in the 1988 Plan, and the Refuge's proposed goals and objectives would not be adopted.

*Wilderness:* No new areas would be recommended for Wilderness designation.

*Wild and Scenic Rivers:* No new rivers would be recommended for inclusion in the Wild and Scenic Rivers System.

*Kongakut River Visitor Use Management:* Kongakut River visitor use would continue to be managed with the following practices:

- Group size limits would be required for guided groups (7 hikers, 10 floaters).
- There would be no group size limits for non-guided groups, although we recommend using the commercial limits of 7 hikers and 10 floaters.
- Information on low-impact camping and other best practices would continue to be available on the Refuge Web site.
- Commercial service providers would continue to have special use permits with occasional compliance checks by the Service.
- Monitoring of physical and social conditions and visitor impacts would continue to occur occasionally.
- Air operator permit holders would be required to land on non-vegetated surfaces and asked to follow all Federal Aviation Administration (FAA) advisories during flight operations.
- The Service would prepare a Public Use Management Plan (as required by the 1988 Plan).

*Alternative B*

Alternative B would adopt the goals and objectives and the revised management policies and guidelines described in Chapter 2 of the Revised Plan.

*Wilderness:* Recommend the Brooks Range Wilderness Study Area to Congress for Wilderness designation.

*Wild and Scenic Rivers:* Recommend the Hulahula, Kongakut, and Marsh Fork Canning Rivers to Congress for inclusion into the National Wild and Scenic Rivers System.

*Kongakut River Visitor Use Management:* Under this alternative, and immediately upon Plan approval, contingent on funding and staff availability, we would proceed with two concurrent step-down plans: a Visitor-Use Management Plan (VUMP) and a Wilderness Stewardship Plan (WSP). In addition to the practices identified under Alternative A, we would implement interim measures:

- Expand monitoring of degraded sites,
- Develop new outreach materials with targeted messages,
- Work with guides to reduce visitor volume,
- Work with air operators to disperse flights over high-use areas,
- Publish a schedule of when guides will be launching trips,
- Increase enforcement of permit conditions and Refuge regulations, and
- Set an interim cap on commercial recreation guides from present through 2016 or through completion of the VUMP/WSP, whichever comes first.

*Alternative C*

Alternative C would adopt the goals and objectives and the revised management policies and guidelines described in Chapter 2 of the Revised Plan.

*Wilderness:* Recommend the Coastal Plain Wilderness Study Area to Congress for Wilderness designation.

*Wild and Scenic Rivers:* Recommend the Atigun River to Congress for inclusion into the National Wild and Scenic Rivers System.

*Kongakut River Visitor Use Management:* Under this alternative, management would be the same as under Alternative B.

*Alternative D*

Alternative D would adopt the goals and objectives and the revised management policies and guidelines described in Chapter 2 of the Revised Plan.

*Wilderness:* Recommend the Brooks Range and Porcupine Plateau Wilderness Study Areas to Congress for Wilderness designation.

*Wild and Scenic Rivers:* Recommend the Atigun, Kongakut, and Marsh Fork Canning Rivers, and those portions of the Hulahula River managed by the Refuge, to Congress for inclusion into the National Wild and Scenic Rivers System.

*Kongakut River Visitor Use Management:* Under this alternative, management would be the same as Alternative B, except there would be no interim cap on commercial recreation guides.

*Alternative E: Preferred Alternative*

Alternative E would adopt the goals and objectives and the revised management policies and guidelines described in Chapter 2 of the Revised Plan.

*Wilderness:* Recommend the Brooks Range, Porcupine Plateau, and Coastal Plain Wilderness Study Areas to Congress for Wilderness designation.

*Wild and Scenic Rivers:* Recommend the Atigun, Hulahula, Kongakut, and Marsh Fork Canning Rivers to Congress for inclusion into the National Wild and Scenic Rivers System.

*Kongakut River Visitor Use:* Under this alternative, management would be the same as under Alternative D.

*Alternative F*

Alternative F would adopt the goals and objectives and the revised management policies and guidelines described in Chapter 2 of the Revised Plan.

*Wilderness:* No new areas would be recommended for Wilderness designation.

*Wild and Scenic River:* No new rivers would be recommended for inclusion into the Wild and Scenic Rivers System.

*Kongakut River Visitor Use:* Under this alternative, management would be the same as under Alternative D.

**Factors We Considered in Decisionmaking**

As explained further below, it is our decision to adopt Alternative E (the Preferred Alternative), as described in the final Revised CCP/EIS for Arctic Refuge. This decision includes the Service recommendation of approximately 12.28 million existing acres for Wilderness designation by Congress. This decision also recommends four of the Refuge's rivers be included in the National Wild and Scenic Rivers System. Designation of a Wilderness Area and Wild and Scenic Rivers requires an act of Congress.

Adoption of Alternative E reflects our decision that this alternative best meets the Service's purpose and need to manage Arctic Refuge to achieve the mission of the National Wildlife Refuge System and to meet the purposes for which the Refuge was established. This alternative conserves the fish, wildlife and habitats of Arctic Refuge and facilitates subsistence and recreation in settings that emphasize natural, unaltered landscapes and natural processes. Arctic Refuge encompasses a wide range of arctic and subarctic ecosystems, unaltered landforms, and native flora and fauna. The Refuge is a place of free-functioning ecological and evolutionary processes, exhibiting a high degree of biological integrity, natural diversity, and environmental health. Alternative E best represents the Service's commitment to implement the Arctic Refuge's vision statement:

> This untamed arctic landscape continues to sustain the ecological diversity and special values that inspired the Refuge's establishment. Natural processes continue and traditional cultures thrive with the seasons and changing times; physical and mental challenges test our bodies, minds and spirit; and we honor the land, the wildlife and the native people with respect and restraint. Through responsible stewardship this vast wilderness is passed on, undiminished, to future generations.

Selection of this Alternative recognizes that Arctic Refuge exemplifies the characteristics of wilderness. Embodying tangible and intangible values, the Refuge's wilderness characteristics include natural conditions, natural quiet, wild character, and exceptional opportunities for solitude, adventure, and immersion in the natural world.

Decision:

Arctic Refuge is nationally recognized for its unique and wide range of arctic and subarctic ecosystems that retain a high degree of biological integrity and natural diversity. The Refuge exemplifies the idea of wilderness embodying tangible and intangible values including natural conditions, natural quiet, wild character, and exceptional opportunities for solitude, adventure, and immersion in the natural world. The Refuge represents deep-rooted American cultural values about frontiers, open spaces, and wilderness. It is one of the finest representations of the wilderness that helped shape our national character and identity.

In making the decision, we reviewed and carefully considered the relevant issues, concerns, and public input received throughout the planning process, comments on the draft and final Revised CCP/EIS, and other factors including refuge purposes and relevant laws, regulations, and policies.

Alternative E best accomplishes refuge purposes; best achieves the mission of the National Wildlife Refuge System; and best meets the visions and goals identified in the plan. It best provides long-term protection of fish and wildlife habitat while providing recreational and other opportunities in a natural environment while minimizing and preventing human-caused change.

Dated: April 3, 2015.

**Geoffrey L. Haskett,**

*Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.*

[FR Doc. 2015–08526 Filed 4–10–15; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LNM9300000 L12200000 XX0000]**

### Renewal of Approved Information Collection; OMB Control No. 1004–0165

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** 60-Day Notice and Request for Comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information that is necessary to implement two provisions of the Federal Cave Resources Protection Act — one which requires Federal agencies to consult with interested parties to develop a listing of significant caves, and another under which Federal and State governmental agencies and bona fide educational and research institutions may request confidential information regarding significant caves. The Office of Management and Budget (OMB) has assigned control number 1004–0165 to this information collection.

**DATES:** Submit comments on the proposed information collection by June 12, 2015.

**ADDRESSES:** Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: *Jean_Sonneman@blm.gov.*

Please indicate ''Attn: 1004–0165'' regardless of the form of your comments.

**FOR FURTHER INFORMATION CONTACT:** James Goodbar, at 575–234–5929. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Mr. Goodbar.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

The following information pertains to this information collection:

*Title:* Cave Management: Cave Nominations and Confidential Information (43 CFR part 37).

*Forms:* None.

*OMB Control Number:* 1004–0165.

*Abstract:* The information covered in this request applies to caves on Federal lands administered by the BLM, National Park Service, U.S. Fish and Wildlife Service, and Bureau of Reclamation. The BLM collects information from appropriate private sector interests, including ''cavers,'' in order to update a list of significant caves that are under the jurisdiction of the agencies listed above. The BLM also processes requests for confidential information regarding significant caves. The information enables the BLM to comply with the Federal Cave Resources Protection Act (16 U.S.C. 4301–4310).

*Frequency of Collection:* On occasion.

*Estimated Number and Description of Respondents:* 14 individuals and households.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* 84 hours.

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* None.

The following table details the individual components and respective hour burdens of this information collection request:

| A. Type of response | B. Number of responses | C. Time per response | D. Total hours (column B × column C) |
|---|---|---|---|
| Cave Nomination | 10 | 8 | 80 |
| Request for Confidential Cave Information | 4 | 1 | 4 |
| Totals | 14 | | 84 |

Before including your address, phone number, email address, or other person identifying information in your comment, you should be aware that your entire comment—including your person 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.

**Jean Sonneman,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 2015–08408 Filed 4–10–15; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–IMR–BITH–13318; PPIMBITHR0–PPMRSNR1Z.Y00000]**

### Plan of Operations and Related Categorical Exclusion for Plugging and Reclamation of Two Natural Gas Wells, Big Thicket National Preserve, Texas

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Park Service has received from Unit Petroleum Company a plan of operations to plug, abandon, and reclaim two natural gas wells in Big Thicket National Preserve in Polk County, Texas. We are requesting comments on the plan of operations and on the related categorical exclusion from provisions of the National Environmental Protection Act for this proposal.

**DATES:** Submit comments by May 13, 2015.

**ADDRESSES:** The plan of operations and the related categorical exclusion are available for public review and comment at *http://parkplanning.nps.gov/bith* and in the Office of the Superintendent, Edward Comeau—Acting, Big Thicket National Preserve, 6044 FM 420, Kountze, Texas 77625. Copies of the documents are available upon request from the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ryan Desliu, Oil and Gas Program Manager, Big Thicket National Preserve, 6044 FM 420, Kountze, Texas 77625, Telephone: (409) 951–6822; or email at *Ryan_Desliu@nps.gov*.

**SUPPLEMENTARY INFORMATION:** Unit Petroleum Company proposes to plug, abandon, and reclaim the Blackstone #1 and #2 wells currently in shut in status within the Big Sandy Creek Corridor Unit of Big Thicket National Preserve. The wells were drilled before we acquired the land and must be plugged and abandoned to meet Texas Railroad Commission and NPS regulations. The proposed operation will only create minor impacts to resources in the Preserve.

An operator requiring access on, across, or through National Park Service lands or waters may conduct activities only under an approved plan of operations. We must complete an environmental analysis and make a decision on the plan of operations within 60 days of finding the plan to be complete. We must also publish a notice in the **Federal Register** informing the public that the plan is available for public review and comment.

Public scoping for this proposal was conducted from May 18–June 18, 2012. The scoping brochure was also posted on the NPS's Planning Environment and Public Comment Web site.

If you wish to comment on the plan of operations and categorical exclusion, you may mail comments to the name and address above or post comments online at *http://parkplanning.nps.gov/bith*. The documents will be on public review for 30 days. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 14, 2014.

**Edward Comeau,**

*Acting Superintendent, Big Thicket National Preserve, National Park Service.*

[FR Doc. 2015–08375 Filed 4–10–15; 8:45 am]

**BILLING CODE 4312–CB–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Joint Stipulation of Settlement Under the Clean Air Act, the Comprehensive Environmental Response Compensation and Liability Act and the Emergency Preparedness and Community Right-To-Know Act

On April 7, 2015, the Department of Justice lodged a proposed Joint Stipulation of Settlement with the United States District Court for the Southern District of Alabama in the lawsuit entitled *United States of America* v. *Millard Refrigerated Services, LLC* Civil Action No. 15–186.

The United States filed a complaint simultaneously with the filing of the Joint Stipulation of Settlement on April 7, 2015. The complaint in this action alleged that Defendant Millard Refrigerated Services, LLC, a Delaware limited liability company, f/k/a Millard Refrigerated Services, Inc. (''Millard'') violated Sections 112(r)(1) and 112(r)(7) of the Clean Air Act (''CAA''), 42 U.S.C. 7412(r)(1) and 7412(r)(7), Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9603, and Section 304 of the Emergency Preparedness and Community Right-To-Know Act (''EPCRA''), 42 U.S.C. 11004, at its facility located in Theodore, Alabama (''the Facility''). Millard operated a cold storage facility with over 242,000 square feet of storage and used over 190,000 pounds of anhydrous ammonia ($NH_3$), a highly toxic substance, in its operations. Defendant allowed three releases of $NH_3$ over a three year period, with the third release of over 32,000 pounds of $NH_3$ in August of 2010 resulting in 154 hospitalizations.

The Complaint alleges that Millard violated every section of the Program 3 Risk Management Prevention (RMP) Program regulations for a total of 36 violations of the RMP Regulations, three violations of the general duty of care under Section112(r) of the CAA and four violations of the notice requirements under EPCRA and CERCLA. As regards the notice requirements, the Complaint alleges that Millard failed to timely notify the National Response Center, the State Emergency Response Center and the Local Emergency Planning Committee as required by CERCLA and EPCRA with regard to these releases.

Under the Joint Stipulation of Settlement, Millard will pay a civil penalty of $3,009,855 in order to resolve these violations. There is no injunctive relief under this agreement as Defendant's parent, Millard Holdings, Inc., shut down the refrigerated portion of the Facility in July 2013 and is currently using it as a warehouse.

The publication of this notice opens a period for public comment on the Joint Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Millard Refrigerated Services, LLC* Civil Action No. 15–186. D.J. Ref. No. 90–5–2–1–10384. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General<br>U.S. DOJ–ENRD<br>P.O. Box 7611<br>Washington, DC 20044–7611. |

During the public comment period, the Joint Stipulation of Settlement may be examined and downloaded at this Justice Department Web site: *http://*

*www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Joint Stipulation of Settlement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.75 (25 cents per page reproduction costs for 11 pages) payable to the United States Treasury.

**Henry S. Friedman,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2015–08391 Filed 4–10–15; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2015–01, The United Association of Journeymen and Apprentices of the Plumbers and Pipefitters Local Union No. 189 Pension Plan, D–11750; 2015–02, The Camco Financial & Subsidiaries Salary Savings Plan and Huntington Bancshares, Inc., D–11751; 2015–03, Teamsters Local Union No. 727 Pension Fund, D–11770; 2015–04, Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund, L–11775; and 2015–05, Local 268, Sheet Metal Workers International Association, AFL–CIO, L–11794.

**SUPPLEMENTARY INFORMATION:** A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**The United Association of Journeymen and Apprentices of The Plumbers and Pipefitters Local Union No. 189 Pension Plan, as Amended (the Plan or the Applicant) Located in Columbus, Ohio [Prohibited Transaction Exemption 2015–01; Exemption Application No. D–11750]**

**Exemption**

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the sale (Sale) of certain improved real property (the Property) by the Plan to Local #189 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) As consideration, the Plan receives $3,100,000 or the fair market value of the Property as determined by a qualified, independent appraiser (the Appraiser) in a written appraisal of the Property, which is updated on the date of Sale;

(c) The Plan pays no commissions, costs or fees with respect to the Sale;

(d) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(e) The Sale has been reviewed and approved by a qualified, independent fiduciary, who, among other things: has reviewed and approved the methodology used by the Appraiser and has ensured that the appraisal methodology was properly applied in determining the fair market value of the Property; and has determined that it is prudent to go forward with the Sale.

**Written Comments**

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the publication, on November 26, 2014, of the Notice in the **Federal Register**. All comments and requests for a hearing were due by January 10, 2015.

During the comment period, the Department received one written comment with respect to the Notice that was submitted by a Plan participant (the Commenter), and no requests for a hearing. In addition, the Applicant informed the Department of an updated appraisal of the Property, which was later submitted to the Department and required the Department's modification to the operative language of the Notice.

Discussed below are the comment and the Department's revision to the Notice.

*The Comment*

The Commenter asked the Department to deny the proposed exemption, stating that the proposed transaction is an attempt by the employers to put the financial burden of a pension plan ''in the yellow'' on the backs of Union members, instead of raising the Plan's contribution rate.

In response, the Applicant states that the comment is factually inaccurate. First, according to the Applicant, the Commenter incorrectly states that the Plan is ''in the yellow.'' To clarify the meaning of this actuarial phrase, the Applicant represents that plans are considered ''in the green zone'' when

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

the funded percentage is 80% or higher; ''in the red zone'' when the funded percentage is below 65%; and ''in the yellow zone'' when the funded percentage is between 65% and 80%. The Applicant represents that the Plan's actuary has certified that the Plan has been ''in the green zone'' for each plan year since the plan year beginning April 1, 2011. Further, the Applicant represents that the actual funded percentages, as certified by the actuary each year, have been as follows:

| Plan year beginning April 1 | PPA Funded Percentage certified by actuary | Zone |
|---|---|---|
| 2014 | 90.2% | Green |
| 2013 | 85.0% | Green |
| 2012 | 83.5% | Green |
| 2011 | 80.4% | Green |
| 2010 | 74.2% | Yellow |

Second, the Applicant states that whether the Plan holds the illiquid asset (*i.e.,* the Property) or the liquid investment (*i.e.,* the cash proceeds that can be reinvested), the proposed transaction would not change the funded status of the Plan and, therefore, would not affect whether or not the per hour contribution rate would need to be increased.

Third, and lastly, the Applicant states that the proposed exemption was not initiated by the employers, but at the request of the Union to allow it to purchase the Property. The Applicant explains that the Union desires to purchase the Property for the following reasons: (1) The Plumbers and Pipefitters Local #189 Joint Apprenticeship and Journeyman Training Committee, which leases space in the building (the Building) located on the Property, needs more teaching space, but the Plan is unwilling to expand the Building because it has determined that such an investment would be imprudent since the current fair market value of the Building is based on the redevelopment value of the land; (2) there is a significant cost associated with moving the teaching equipment that is currently installed in the Building to another location; and (3) the Union desires to retain use of the current facility even though the Plan has received two unsolicited offers to purchase the Property.

With respect to the two unsolicited offers, the Applicant represents that it received an unsolicited offer of $2,700,000 (with required covenants, a commission payable, and significant contingencies) in January 2014 and an earlier unsolicited offer of $3,310,000 (with required covenants, a commission payable, and significant contingencies) in January 2008 (the 2008 Offer). The Applicant represents that although the 2008 Offer exceeds the cash price payable by the Union to the Plan (*i.e.,* $3,100,000) by $210,000, the net proceeds the Plan will receive from the Union will be significantly higher than what the Plan would have received from the 2008 Offer because of the covenant risks, commissions, and contingencies attached to the 2008 Offer. According to the Applicant, the 2008 Offer was contingent on the purchaser's receipt of: (1) satisfactory soil tests and environmental reports that the premises were free from environmental contamination; [2] (2) satisfactory engineering and economic feasibility reports regarding the ''economic viability of the purchaser's project;'' (3) zoning approval; [3] (4) a survey of the Property by an engineer or surveyor acceptable to the purchaser at the Plan's expense; and (5) an affidavit from the Plan that it had ''no knowledge of the dumping, storing or past or present existence of any hazardous waste or products on the'' Property.[4] The Applicant represents that the Plan did not believe that it would be able to satisfy these contingencies. Further, the Applicant represents that even if the Plan could have satisfied the contingencies, it would have done so at a significant expense.

*Modification of the Notice*

On January 5, 2015, the Applicant informed the Department of an appraisal report dated December 16, 2014 (the December 2014 Appraisal), that had been prepared by Thomas J. Horner, MAI, SRA, ASA, the Appraiser. On December 2, 2014, the Appraiser placed the fair market value of the Property at $3,100,000.

Because the fair market value of the Property as reported in the December 2014 Appraisal represents an increase of $200,000 over the $2,900,000 fair market value reported by the Appraiser as of January 27, 2014 in an appraisal report dated January 31, 2014, the Department has modified condition (b) of the exemption by replacing the ''$2,900,000'' value with ''$3,100,000'' to reflect the most recent valuation of the Property.

Accordingly, after giving full consideration to the entire record, including the written comment and the Department's modification of the Notice, the Department has decided to grant the exemption. The complete application file (D–11750), and all supplemental submissions received by the Department, are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** at 79 FR 70624 (November 26, 2014).

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number.)

**The Camco Financial & Subsidiaries Salary Savings Plan (the Plan) and Huntington Bancshares, Inc. (Huntington) Located in Cambridge, OH and Columbus, OH [Prohibited Transaction Exemption 2015–02; Application No. D–11751]**

**Exemption**

*Section I: Transactions*

The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and (E) of the Code,[5] shall not apply to the acquisition and holding of certain warrants (the Warrants) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of Camco Financial Corporation (Camco), the sponsor of the Plan and a party in interest with respect to the Plan.

*Section II: Conditions*

(a) The Accounts acquired the Warrants in connection with the exercise of subscription rights (the Rights) to purchase Stock by the Plan's directed trustee (the Directed Trustee) on behalf of Plan participants;

(b) Each stockholder, including each of the Accounts holding Stock on behalf of Plan participants, received the same proportionate number of Rights based on the number of shares of Stock held

[2] The Applicant represents that given the training with welding supplies and medical gases, the Plan had significant concern about whether a clean environmental report would be obtainable.

[3] The Applicant represents that current zoning limitations significantly restrict the potential uses of the Property.

[4] As mentioned in the preceding footnote, the Applicant represents that because of the use and storage of various chemicals on the Property, it was not clear whether the Plan could have given such an affidavit.

[5] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

as of July 29, 2012 (the Record Date), and the same proportionate number of Warrants based on the number of Rights exercised during the Offering;

(c) The Plan participant whose Account received the Warrants made, or will make, all decisions with respect to the holding and exercise of such Warrants;

(d) The Plan did not pay, nor will it pay, any brokerage fees, commissions, or other fees or expenses to any related broker in connection with the acquisition, holding, and exercise of the Rights or Warrants;

(e) The acquisition of the Rights by the Accounts resulted from an independent corporate act of Camco; and

(f) The Rights and Warrants were acquired pursuant to and in accordance with, provisions under the Plan for individually directed investments of the Accounts holding Stock on behalf of Plan participants.

*Effective Date:* This exemption is effective from November 1, 2012, until the Warrants are exercised or expire.

**Written Comments**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on November 26, 2014, at 79 FR 70628. All comments and requests for hearing were due by January 10, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11751), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 26, 2014, at 79 FR 70628.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Brown of the ((-Department, telephone (202) 693–83520. (This is not a toll-free number.)

**Teamsters Local Union No. 727 Pension Fund (the Fund) Located in Chicago, Illinois [Prohibited Transaction Exemption 2015–03; Application No. D–11770]**

**Exemption**

*Section I. Covered Transactions*

The restrictions of sections 406(a)(1)(A) and (D) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to: (1) The sale (the Sale) by the Fund of three separate 25 percent interests in 1300 Higgins Road LLC (the LLC), a limited liability company of which the Fund is the sole member (each, an LLC Interest, and collectively, the LLC Interests), respectively, to each of Teamsters Local Union No. 700 (Local 700), Teamsters Local Union No. 727 (Local 727), and the Teamsters Joint Council No. 25 (the Joint Council, and together with Local 700 and Local 727, the Unions); and (2) the subsequent Sale of the Fund's remaining 25 percent LLC interest (the Fund's LLC Interest) to the Unions due to the exercise by the Fund of a put right to sell the Fund's LLC Interest to the Unions (the Put Right), provided that the conditions in Section II are satisfied.

*Section II. Conditions for Relief*

(a) The Fund receives from each of the Unions, as consideration for the Sale of the LLC Interests, a cash amount equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the O'Hare Corporate Center in Park Ridge, Illinois (the Property), determined on the date of the Sale by an Independent Appraiser;

(b) The Fund, upon exercise of the Put Right, receives from the Unions a one-time aggregate cash amount equal to 25 percent of the greater of: (1) The original purchase price paid by the Fund, or (2) the fair market value of the Property on the date of exercise of the Put Right, as determined by an Independent Appraiser;

(c) The Sale and the exercise of the Put Right are each one-time transactions for cash;

(d) The Independent Fiduciary: (1) Analyzes and approves the terms of the Sale and Put Right; (2) ensures that the terms of the Sale and Put Right and the conditions of the exemption are met; (3) has sole responsibility for the exercise of the Put Right on behalf of the Fund; (4) has sole responsibility and authority for the management and operation of the LLC and the Property; and (5) selects the Independent Appraiser and verifies the methodology used by the Independent Appraiser in determining the fair market value of the Property for all purposes under this proposed exemption;

(e) An Independent Appraiser, who is selected by the Independent Fiduciary, establishes the fair market value of the Property for purposes of the Sale and the Put Right, using a methodology approved by the Independent Fiduciary;

(f) The Fund does not pay any commissions, costs or other expenses in connection with the Sale and Put Right, other than the legal fees of the Fund's counsel, the services of the Independent Fiduciary and the services of the Independent Appraiser;

(g) Since its acquisition of the Property, the Fund's ownership interest in the Property has constituted five percent or less of the Fund's assets, and immediately after the Sale the Fund's ownership interest in the Property will be less than two percent of the Fund's assets;

(h) No member of the LLC shall, directly or indirectly, without the approval of the Independent Fiduciary: (1) Act for or on behalf of the LLC; (2) transact any business in the name of the LLC; or (3) sign documents for or otherwise bind the LLC;

(i) No LLC Interests shall be transferable by the Unions prior to the exercise of the Put Right by the Fund, without the approval of the Independent Fiduciary;

(j) Any trustee of the Fund must recuse himself or herself from any vote regarding the termination or removal of the Independent Fiduciary for the Fund if he or she is an officer (or a relative of an officer as defined in Section III) of any of the Unions;

(k) The terms and conditions of the Sale and the Put Right are at least as favorable to the Fund as those obtainable in an arm's-length transaction with an unrelated third party; and

(l) The Sale or Put Right is not part of an arrangement, agreement, or understanding designed to benefit a party in interest with respect to the Fund.

*Section III. Definitions*

(a) The term ''relative'' is a relative as that term is defined in section 3(15) of ERISA, and also includes a brother, sister, and a spouse of a brother or sister;

(b) The term ''Independent Fiduciary'' means Intercontinental Real Estate Corporation (Intercontinental) or another fiduciary of the Plan who (1) is

independent or unrelated to the Unions and their affiliates and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with ERISA), and (2) if relevant, succeeds Intercontinental in its capacity as Fiduciary to the Plans in connection with the transactions described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to the Unions and their affiliates if: (i) Such Independent Fiduciary directly or indirectly controls, is controlled by or is under common control, with the Unions and their affiliates; (ii) such Independent Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption other than for acting as independent fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from the Unions and their affiliates, exceeds two percent (2%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(c) The term ''Independent Appraiser'' means an individual or entity meeting the definition of a ''Qualified Independent Appraiser'' under 29 CFR 2570.31(i) retained to determine, on behalf of the Plans, the fair market value of the Property as of the date of the Sale, and may be the Independent Fiduciary, provided it satisfies the definition of Independent Appraiser herein;

(d) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with, the person;

(2) Any officer, director, employee, relative, or partner of the person; or

(3) Any corporation or partnership of which such person is an officer; and

(e) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

*Effective Date:* This exemption is effective as of its date of publication in the **Federal Register**.

**Written Comments**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published on December 30, 2014, at 79 FR 78482. All comments and requests for hearing were due by February 13, 2015. During the comment period, the Department received several phone inquiries that generally concerned matters outside the scope of the exemption. Furthermore, the Department received no written comments and no requests for a hearing from interested persons. However, the Department has made one technical correction to the Notice, as described below.

*The Department's Technical Correction*

The Department notes that the Notice incorrectly identifies the Fund as ''Teamsters Union Local No. 727 Pension Fund (the Fund).'' However, this notice correctly identifies the Fund as ''Teamsters Local Union No. 727 Pension Fund (the Fund).''

After giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11770), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 30, 2014, at 79 FR 78482.

*For Further Information Contact:* Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

**Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund (the Plan) Cape Girardeau, Missouri [Prohibited Transaction Exemption 2015–04; Exemption Application No. L–11775]**

**Exemption**

The restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the sale by the Plan of a parcel of improved real property (the Property) to the Craftsman Independent Union Local #1 (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The sales price for the Property is the greater of either: (1) $250,000; or (2) the fair market value of the Property as established by qualified independent appraisers (the Appraisers) in an appraisal of the Property that is updated on the date of the sale;

(c) RMI, as the qualified independent fiduciary, reviews and approves the methodology used by the Appraisers to ensure that such methodology is properly applied in determining the fair market value of the Property, and determines that it is prudent to go forward with the sale;

(d) RMI represents the interests of the Plan at the time the sale is consummated;

(e) The Plan pays no real estate fees or commissions in connection with the sale;

(f) The Union reimburses the Plan for 50% of the costs of the exemption application and pays all recording charges, attorney's fees, title insurance premiums, and any transfer fees or taxes; and

(g) The terms of the sale are no less favorable to the Plan than the terms the Plan would receive under similar circumstances in an arm's length transaction with an unrelated party.

**Written Comments**

In the notice of proposed exemption (the Notice), the Department invited all interested persons to submit written comments within 40 days of the publication, on November 26, 2014, of the Notice in the **Federal Register**. All comments were due by January 5, 2015. During the comment period, the Department received no comments from interested persons.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Exemption Application No. L–11775) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on November 26, 2014 at 79 FR 70645.

*For Further Information Contact:* Mrs. Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number.)

**Local 268, Sheet Metal Workers International Association, AFL–CIO (the Union) Located in Caseyville, IL [Prohibited Transaction Exemption 2015–05; Application No. L–11794]**

**Exemption**

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, shall not apply to the sale by the Fund of certain improved real property located at 2727 N. 89th Street, Caseyville, IL 62232 (the Building), to the Union (the Sale), provided that the following conditions have been met:

(a) The Sale is a one-time transaction for cash;

(b) At the time of the Sale, the Fund receives the greater of either: (1) $110,226.48; or (2) the fair market value of the Building, as established by a qualified independent appraiser (the Appraiser), as described in condition (c), as of the date of Sale;

(c) Before the date of Sale, an Appraiser who satisfies the Department's definition of ''qualified independent appraiser'' will be retained by the Independent Fiduciary on behalf of the Fund without any involvement of the Union or any other party to the covered transactions or any planned future transactions, and will conduct a full, independent Appraisal (the Appraisal) of the Building for purposes of the Sale that complies in all respects with applicable appraisal standards;

(d) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Fund, represents the Fund's interests for all purposes with respect to the Sale, and: (1) Determines, among other things, that it is in the best interest of the Fund to proceed with the Sale; and (2) reviews and approves the purchase price and methodology used by the Appraiser in its Appraisal;

(e) The Fund pays no fees, commissions or other expenses associated with the Sale; and

(f) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's-length transaction with an unrelated third party.

**Written Comments**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on December 30, 2014, at 79 FR 78486. All comments and requests for hearing were due by February 13, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. L–11794), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 30, 2014, at 79 FR 78486.

*For Further Information Contact:* Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of April, 2015.

**Lyssa E. Hall,**

*Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2015–08301 Filed 4–10–15; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *March 16, 2015 through March 20, 2015*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which

are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*85,717, California Redwood Company, Korbel, California. December 9, 2013*

*85,810, Innopad Technology, Inc., Wilmington, Massachusetts. March 18, 2015*

*85,817, Schneider Electric USA, Inc., Salt Lake City, Utah. March 18, 2015*

*85,821, Maverick Tube Corporation DBA Tenaris, Conroe, Texas. February 2, 2014*

*85,841, Bradken Inc., Chehalis, Washington. March 18, 2015*

*85,843, Sabic Innovative Plastics, Washington, West Virginia. February 17, 2014*

*85,844, A Schulman, Inc., Stryker, Ohio. February 19, 2014*

*85,848, Heritage Home Group LLC, Lenoir, North Carolina. February 23, 2014*

*85,851, Bose Corporation, Blythewood, South Carolina, March 10, 2014*

*85,860, Coherent, Inc., Santa Clara, California. March 2, 2014*

*85,863, Tejas Mfg. Co., San Angelo, Texas. February 27, 2014*

*85,866, Panasonic Disc Manufacturing Corporation of America (PDMC), Torrance, California. March 4, 2014*

*85,879, Triumph Composite Systems, Spokane, Washington. March 12, 2014*

*85,830, Woodbridge Ventures LLC, Lansing, Michigan. February 12, 2014*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*85,806, Premier Tech Chrones, Montgomery, Alabama.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*85,797, Revett Mining Company, Inc., Troy, Montana.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*85,799, Comprehensive Logistics, Inc., Lansing, Michigan.*

*85,811, Chancellors, Master & Scholrs, West Nyack, New York.*

*85,814, Grape Solar, Inc., Eugene, Oregon.*

*85,829, Sony Puerto Rico, Inc., Guaynabo, Puerto Rico.*

*85,831, Carefusion, Albuquerque, New Mexico.*

*85,833, Milestone Systems, Inc., Burnsville, Minnesota.*

*85,858, Transcend Services, Inc., Atlanta, Georgia.*

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

*85,709, Brammo, Inc., Talent, Oregon.*

I hereby certify that the aforementioned determinations were issued during the period of *March 16, 2015 through March 20, 2015.* These determinations are available on the Department's Web site *www.tradeact/*

*taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 26th day of March 2015.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2015–08317 Filed 4–10–15; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 23, 2015.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 23, 2015.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of March 2015.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

**APPENDIX**

14 TAA PETITIONS INSTITUTED BETWEEN 3/9/15 AND 3/13/15

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 85866 | Panasonic Disc Manufacturing Corporation of America (PDMC) (Company) | Torrance, CA | 03/09/15 | 03/04/15 |
| 85867 | Day & Zimmermann, Inc. (State/One-Stop) | Parsons, KS | 03/09/15 | 03/06/15 |
| 85868 | Honeywell Safety Products (Company) | Cranston, RI | 03/10/15 | 03/10/15 |
| 85869 | ProTeam, Inc. (Company) | Boise, ID | 03/10/15 | 03/09/15 |
| 85870 | Maidenform/HanesBrands (Workers) | Fayetteville, NC | 03/11/15 | 03/10/15 |
| 85871 | Multiband USA (Workers) | Richmond, KY | 03/11/15 | 03/10/15 |
| 85872 | Concurrent Manufacturing Solutions, LLC (Company) | Ozark, MO | 03/11/15 | 03/10/15 |
| 85873 | John Deere & Company (EW/TCAO) (Workers) | Waterloo, IA | 03/11/15 | 03/05/15 |
| 85874 | Central Missouri Plastics (State/One-Stop) | Lee's Summit, MO | 03/11/15 | 03/09/15 |
| 85875 | Archer Daniels Midland Cocoa (Workers) | Hazelton, PA | 03/11/15 | 03/08/15 |
| 85876 | Sensor Switch (Company) | Wallingford, CT | 03/12/15 | 03/11/15 |
| 85877 | FTE Automotive USA Inc. (Company) | Auburn Hills, MI | 03/12/15 | 03/12/15 |
| 85878 | MicroTelecom Systems LLC (State/One-Stop) | Uniondale, NY | 03/13/15 | 03/12/15 |
| 85879 | Triumph Composite Systems (Union) | Spokane, WA | 03/13/15 | 03/12/15 |

[FR Doc. 2015–08312 Filed 4–10–15; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *March 9, 2015 through March 13, 2015.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*85,650, Herbs America Inc., Grants Pass, Oregon. November 17, 2013*

*85,697, ATI Specialty Alloys Components, Albany, Oregon. July 4, 2014*

*85,732, Norandal USA, Inc., Newport, Arkansas. December 17, 2013*

*85,735, Verge America, New Windsor, New York. December 16, 2013*

*85,763, Ross Mould LLC, Washington, Pennsylvania. August 24, 2014*

*85,764, ITW Thielex, Somerset, New Jersey. January 15, 2014*

*85,776, Raven Industries, Earth City, Missouri. January 20, 2014*

*85,779, Brayton International, High Point, North Carolina. March 12, 2015*

*85,796, U.S. Steel Tubular Products, Inc., Lone Star, Texas. January 27, 2014*

*85,801, CareFusion Resources, LLC, Ontario, California. January 30, 2014*

*85,807, TE Connectivity, Menlo Park, California. February 2, 2014*

*85,818, Honeywell International, Inc., St. Charles, Illinois. February 5, 2014*

*85,827, Plews, Inc., Dixon, Illinois. February 10, 2014*

*85,837, Sonoco, Wapato, Washington. February 11, 2014*

*85,722, Triumph Aerostructures, Red Oak, Texas. December 12, 2013*

*85,739, Nippon Paper Industries USA, Co. Limited, Port Angeles, Washington, December 18, 2013*

*85,823, Wilco Machine and Fab., Inc., Marlow, Oklahoma. February 9, 2014*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*85,777, Scottsdale Healthcare Hospitals, Scottsdale, Arizona.*

*85,824, HFW Ventures, LLC, Kenal, Alaska.*

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

*85,845, Powerex, Inc., Youngwood, Pennsylvania.*

I hereby certify that the aforementioned determinations were issued during the period of *March 9, 2015 through March 13, 2015.* These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 20th day of March 2015.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2015–08313 Filed 4–10–15; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 23, 2015.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 23, 2015.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of March 2015.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

**APPENDIX**

12 TAA PETITIONS INSTITUTED BETWEEN 3/16/15 AND 3/20/15

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 85880 | Stewart Title Guaranty Company (Workers) | Houston, TX | 03/16/15 | 03/13/15 |
| 85881 | Nabors Completion & Services Co. (State/One-Stop) | Gaylord, MI | 03/16/15 | 03/13/15 |
| 85882 | The Nielsen Company (State/One-Stop) | Shelton, CT | 03/16/15 | 03/13/15 |
| 85883 | Schlumberger (Company) | Prudhoe Bay, AK | 03/17/15 | 03/16/15 |
| 85884 | The Levy Group (Workers) | New York, NY | 03/19/15 | 03/17/15 |
| 85885 | HCL America (Workers) | Cary, NC | 03/19/15 | 03/18/15 |
| 85886 | AMETEK ISC (Company) | West Chicago, IL | 03/19/15 | 03/18/15 |
| 85887 | Unit Drilling Company (State/One-Stop) | Oklahoma City, OK | 03/19/15 | 03/16/15 |
| 85888 | General Mills (Union) | New Albany, IN | 03/19/15 | 03/18/15 |
| 85889 | GE Oil & Gas-Lufkin Industries (Union) | Lufkin, TX | 03/20/15 | 03/19/15 |
| 85890 | AIP BI Holdings dba Brooks Instrument (Company) | Hatfield, PA | 03/20/15 | 03/19/15 |
| 85891 | Fender Musical Instruments Corporation (State/One-Stop) | Scottsdale, AZ | 03/20/15 | 03/19/15 |

[FR Doc. 2015–08316 Filed 4–10–15; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Tuesday June 9, 2015. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration

9:00 a.m. Commissioner's welcome and review of agency developments

9:45 a.m. Ethics Briefing

10:15 a.m. New Data Products in OEUS

11:15 a.m. Occupational Requirements Survey status and outputs

1:15 p.m. Chart packages with news releases

1:45 p.m. K–12 pages

2:30 p.m. New inputs to PPI industry indexes

3:45 p.m. Report on Stakeholders Surveys

4:45 p.m. Future topics and meeting wrap-up

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202.691.6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 8th day of April 2015.

**Kimberly D. Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2015–08378 Filed 4–10–15; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as Amended), the National Science Foundation announces the following meeting:

**NAME:** Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

**DATE/TIME:** May 13, 2015; 9:00 a.m. to 5:00 p.m., May 14, 2015; 9:00 a.m. to 12:30 p.m.

**PLACE:** National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 110, Arlington, VA 22230.

**TYPE OF MEETING:** Open.

**CONTACT PERSON:** Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

**SUMMARY OF MINUTES:** May be obtained from contact person listed above.

**PURPOSE OF MEETING:** To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral

and Economic Sciences Directorate (SBE) programs and activities.

**Agenda**

**Wednesday, May 13, 2015**

SBE Directorate Update
NSF Public Access Plan: *Today's Data, Tomorrow's Discoveries*
Report from SBE AC Subcommittee on Replicability in Science
SBE 2020 Themes/*Rebuilding the Mosaic*
National Center for Science and Engineering Statistics
Statistical Sciences at NSF (StatsNSF) Subcommittee Update
Science of Broadening Participation

*Thursday, May 14, 2015*

Meeting with NSF Leadership
Decision-Making under Uncertainty/Risk and Resilience
Agenda and Dates for Future Meetings, Assignments and Concluding Remarks

Dated: April 7, 2015.

**Suzanne Plimpton,**

*Acting Committee Management Officer.*

[FR Doc. 2015–08322 Filed 4–10–15; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–025 and 52–026; NRC–2008–0252]**

## Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Containment Structural Wall Module Design Details

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 29 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@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 access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption was submitted by letter dated July 3, 2014 (ADAMS Accession No. ML14187A533), and supplemented by letters dated August 28, 2014 (ADAMS Accession No. ML14241A287), September 19, 2014 (ADAMS Accession No. ML14262A475), November 6, 2014 (ADAMS Accession No. ML14310A846), and December 23, 2014 (ADAMS Accession No. ML14357A650).
- 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:** Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 29 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' Appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes related to the design details of the containment internal structural wall modules (CA01, CA02, and CA05). The proposed changes to Tier 2 information in the VEGP Units 3 and 4 UFSAR, and the involved plant-specific Tier 1 and corresponding combined license Appendix C information would allow the use of thicker than normal faceplates to accommodate local demand or connection loads in certain areas without the use of overlay plates or additional backup structures. Additional proposed changes to Tier 2 information and involved Tier 2* information would allow:

(1) a means of connecting the structural wall modules to the base concrete through use of structural shapes, reinforcement bars, and shear studs extending horizontally from the structural module faceplates and embedded during concrete placement as an alternative to the use of embedment plates and vertically oriented reinforcement bars;

(2) a variance in structural module wall thicknesses from the thicknesses identified in the VEGP Units 3 and 4 UFSAR Figure 3.8.3–8, ''Structural Modules—Typical Design Details,'' for some walls that separate equipment spaces from personnel access areas;

(3) the use of steel plates, structural shapes, reinforcement bars, or tie bars between the module faceplates, as needed to support localized loads and ensure compliance with applicable codes;

(4) revision to containment internal structure (CIS) evaluations; and

(5) clarification to the definition of in-containment ''structural wall modules,'' clarifying that the west wall of the In-containment Refueling Water Storage Tank (IRWST) is not considered a ''structural wall module,'' that the CIS critical sections identified in VEGP Units 3 and 4 UFSAR Subsection 3.8.3.5.8.1 present design summaries for areas of ''large'' demand in lieu of areas of ''largest'' demand, and revising the VEGP Units 3 and 4 UFSAR in several places to provide consistency in terminology used to identify the structural wall modules.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML15005A265.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML15005A222 and ML15005A224, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML15005A246 and ML15005A256, respectively. A summary of the amendment documents is provided in Section III of this document.

**II. Exemption**

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated July 3, 2014, and supplemented by letters dated August 28, September 19, November 6, and December 23, 2014, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, Appendix D, Section III.B, as part of license amendment request 14–001, ''Containment Internal Structural Module Design Details (LAR–14–001).''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML15005A265, the Commission finds that:

A. the exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Table 3.3–1, ''Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Building, and Annex Building'' and Table 3.3–7, ''Nuclear Island Critical Structural Sections'' as described in the licensee's request dated July 3, 2014 and supplemented by the letters dated August 28, September 19, November 6, and December 23, 2014. This exemption is related to, and necessary for the granting of License Amendment No. 29, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML15005A265), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of January 13, 2015.

**III. License Amendment Request**

By letter dated July 3, 2014, and supplemented by letters dated August 28, September 19, November 6, and December 23, 2014, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** Notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on August 5, 2014 (79 FR 45480). The August 28, September 19, November 6 and December 23, 2014 licensee supplements had no effect on the no significant hazards consideration determination, and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

**IV. Conclusion**

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on July 3, 2014, as supplemented by letters dated August 28, September 19, November 6 and December 23, 2014. The exemption and amendment were issued on January 13, 2015 as part of a combined package to the licensee (ADAMS Accession No. ML15005A210).

Dated at Rockville, Maryland, this 2nd day of April 2015.

For the Nuclear Regulatory Commission.

**Chandu Patel,**

*Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2015–08411 Filed 4–10–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–305; NRC–2015–0089]**

### Dominion Energy Kewaunee, Inc.; Kewaunee Power Station

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from the requirement to maintain a specified level of onsite property damage insurance in response to a request from Dominion Energy Kewaunee, Inc. (DEK or the licensee) dated March 20, 2014. This exemption would permit the licensee to reduce its onsite property damage insurance from $1.06 billion to $50 million.

**DATES:** April 13, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2015–0089 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0089. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *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:** William Huffman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2046; email: *William.Huffman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Kewaunee Power Station (KPS) facility is a decommissioning power reactor located on approximately 900 acres in Carlton (Kewaunee County), Wisconsin, which is 27 miles southeast of Green Bay, Wisconsin. The licensee, DEK, is the holder of KPS Renewed Facility Operating License No. DPR–43. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

By letter dated February 25, 2013 (ADAMS Accession No. ML13058A065), DEK submitted a certification to the NRC indicating it would permanently cease power operations at KPS on May 7, 2013. On May 7, 2013, DEK permanently shut down the KPS reactor. On May 14, 2013, DEK certified that it had permanently defueled the KPS reactor vessel (ADAMS Accession No. ML13135A209). As a permanently shutdown and defueled facility, and under Section 50.82(a)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR), DEK is no longer authorized to operate the KPS reactor or emplace nuclear fuel into the reactor vessel. The licensee is still authorized to possess and store irradiated nuclear fuel. Irradiated fuel is currently being stored onsite in a spent fuel pool (SFP) and in independent spent fuel storage installation dry casks.

## II. Request/Action

Under 10 CFR 50.12, ''Specific exemptions,'' DEK has requested an exemption from 10 CFR 50.54(w)(1) by a letter dated March 20, 2014 (ADAMS Accession No. ML14090A111). The exemption from the requirements of 10 CFR 50.54(w)(1) would permit DEK to reduce its onsite property damage insurance from $1.06 billion to $50 million.

The regulation in 10 CFR 50.54(w)(1) requires each licensee to have and maintain onsite property damage insurance to stabilize and decontaminate the reactor and reactor site in the event of an accident. The onsite insurance coverage must be either $1.06 billion or whatever amount of insurance is generally available from private sources (whichever is less).

The licensee states that the risk of an accident at a permanently shutdown and defueled reactor is much less than the risk from an operating power reactor. In addition, since reactor operation is no longer authorized at KPS, there are no events that would require the stabilization of reactor conditions after an accident. Similarly, the risk of an accident that that would result in significant onsite contamination at KPS is also much lower than the risk of such an event at operating reactors. Therefore, DEK is requesting an exemption from 10 CFR 50.54(w)(1) to reduce its onsite property damage insurance from $1.06 billion to $50 million, commensurate with the reduced risk of an accident at the permanently shutdown and defueled KPS site.

## III. Discussion

Under 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present.

The financial protection limits of 10 CFR 50.54(w)(1) were established after the Three Mile Island accident out of concern that licensees may be unable to financially cover onsite cleanup costs in the event of a major nuclear accident. The specified $1.06 billion coverage amount requirement was developed based on an analysis of an accident at a nuclear reactor operating at power, resulting in a large fission product release and requiring significant resource expenditures to stabilize the reactor conditions and ultimately decontaminate and cleanup the site (similar to the stabilization and cleanup activities at the Fukushima Daiichi nuclear power facility following the damage from a severe earthquake and tsunami).

These cost estimates were developed based on the spectrum of postulated accidents for an operating nuclear reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system (RCS), as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. With the permanent cessation of reactor operations at KPS and the permanent removal of the fuel from the reactor core, such accidents are no longer possible. As a result, the reactor, RCS, and supporting systems no longer operate and, therefore, have no function related to the storage of the irradiated fuel. Hence, postulated accidents involving failure or malfunction of the reactor, RCS, or supporting systems are no longer applicable.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite. In its March 20, 2014, exemption request, DEK discusses both design-basis and beyond-design-basis events involving irradiated fuel stored in the SFP. The licensee states that there are no possible design-basis events at KPS that could result in a radiological release exceeding the limits established by the U.S. Environmental Protection Agency's (EPA's) early-phase Protective Action Guidelines (PAGs) of 1 roentgen equivalent man at the exclusion area boundary. The only accident that might lead to a significant radiological release at a decommissioning reactor is a

zirconium fire. The zirconium fire scenario is a postulated, but highly unlikely, beyond-design-basis accident scenario that involves loss of all water inventory from the SFP, resulting in a significant heat-up of the spent fuel, and culminating in substantial zirconium cladding oxidation and fuel damage. The probability of a zirconium fire scenario is related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the risks from a zirconium fire scenario continue to decrease as a function of the time that KPS has been permanently shut down.

The licensee provided a detailed analysis of hypothetical beyond-design-basis accidents that could result in a radiological release at KPS in its January 16, 2014, submittal to the NRC (ADAMS Accession No. ML14029A076). One of these beyond-design-basis accidents involves a complete loss of SFP water inventory, where cooling of the spent fuel would be primarily accomplished by natural circulation of air through the uncovered spent fuel assemblies. The licensee's analysis of this accident shows that by October 30, 2014, air-cooling of the spent fuel assemblies will be sufficient to keep the fuel within a safe temperature range indefinitely without fuel damage or radiological release. This is important, because the NRC staff has previously authorized a lesser amount of onsite property damage insurance coverage based on analysis of the zirconium fire risk. In SECY–96–256, ''Changes to Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w)(1) and 10 CFR 140.11,'' dated December 17, 1996 (ADAMS Accession No. ML15062A483), the staff recommended changes to the power reactor insurance regulations that would allow licensees to lower onsite insurance levels to $50 million upon demonstration that the fuel stored in the SFP can be air-cooled. In its Staff Requirements Memorandum to SECY–96–256, dated January 28, 1997 (ADAMS Accession No. ML15062A454), the Commission supported the staff's recommendation that, among other things, would allow permanently shutdown power reactor licensees to reduce commercial onsite property damage insurance coverage to $50 million when the licensee was able to demonstrate the technical criterion that the spent fuel could be air-cooled if the spent fuel pool was drained of water. The staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (*e.g.,* Maine Yankee Atomic Power Station, published in the **Federal Register** on January 19, 1999 (64 FR 2920); and Zion Nuclear Power Station, published in the **Federal Register** on December 28, 1999 (64 FR 72700)). These prior exemptions were based on these licensees demonstrating that the SFP could be air-cooled, consistent with the technical criterion discussed above.

In SECY–00–0145, ''Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,'' dated June 28, 2000, and SECY–01–0100, ''Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in the Spent Fuel Pools,'' dated June 4, 2001 (ADAMS Accession Nos. ML003721626 and ML011450420, respectively), the NRC staff discussed additional information concerning SFP zirconium fire risks at decommissioning reactors and associated implications for onsite property damage insurance. Providing an analysis of when the spent fuel stored in the SFP is capable of air-cooling is one measure that can be used to demonstrate that the probability of a zirconium fire is exceedingly low. However, the staff has more recently used an additional analysis that bounds an incomplete drain down of the SFP water, or some other catastrophic event (such as a complete drainage of the SFP with rearrangement of spent fuel rack geometry and/or the addition of rubble to the SFP). The analysis postulates that decay heat transfer from the spent fuel via conduction, convection, or radiation would be impeded. This analysis is often referred to as an adiabatic heatup.

The licensee's analyses, as referenced in its March 20, 2014, exemption request, demonstrates that under conditions where the SFP water inventory has drained and only air-cooling of the stored irradiated fuel is available, there is reasonable assurance that after October 2014, the KPS spent fuel will remain at temperatures far below those associated with a significant radiological release. In addition, the licensee has also provided an adiabatic heatup analysis, demonstrating that as of October 21, 2014, there will be at least 10 hours after the loss of all means of cooling (both air and/or water), before the spent fuel cladding would reach a temperature where the potential for a significant offsite radiological release could occur. The licensee states that should all means to cool the spent fuel be lost, 10 hours is sufficient time for personnel to respond with additional resources, equipment, and capability to restore cooling to the SFP, even after a non-credible, catastrophic event. As provided in DEK's letters dated August 23, 2013 (ADAMS Accession No. ML13242A019), and January 10, 2014 (ADAMS Accession No. ML14016A078), DEK furnished information concerning its makeup strategies, in the event of a loss of SFP coolant inventory. The multiple strategies for providing makeup to the SFP include: using existing plant systems for inventory makeup; supplying water through hoses to a spool piece connection to the existing SFP piping; or using a diesel-driven portable pump to take suction from Lake Michigan and provide makeup or spray to the SFP. These strategies will be maintained by a license condition. DEK states that the equipment needed to perform these actions are located onsite, and that the external makeup strategy (using a diesel driven portable pump) is capable of being deployed within 2 hours. DEK stated that, considering the very low-probability of beyond-design-basis accidents affecting the SFP, these diverse strategies provide defense-in-depth and time to mitigate and prevent a zirconium fire using makeup or spray to the SFP before the onset of zirconium cladding rapid oxidation.

In the safety evaluation of the licensee's request for exemptions from certain emergency planning requirements dated October 27, 2014 (ADAMS Accession No. ML14261A223), the NRC staff assessed the DEK accident analyses associated with the radiological risks from a zirconium fire at the permanently shutdown and defueled KPS site. The staff has confirmed that under conditions where cooling airflow can develop, suitably conservative calculations indicate that by the end of October 2014, the fuel will remain at temperatures where the cladding will be undamaged for an unlimited period. For the very unlikely beyond-design-basis accident scenario, where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, there will be a minimum of 10 hours from the initiation of the accident until the cladding reaches a temperature where offsite radiological release might occur. The staff finds that 10 hours is sufficient time to support deployment of mitigation equipment to prevent the zirconium cladding from reaching a point of rapid oxidation.

The staff's basis as to why it considers $50 million to be an adequate level of onsite property damage insurance for a decommissioning reactor, once the spent fuel in the SFP is no longer susceptible to a zirconium fire, is provided in SECY–96–256. The staff has postulated that there is still a potential

for other radiological incidents at a decommissioning reactor that could result in significant onsite contamination besides a zirconium fire. In SECY–96–256, the NRC staff cited the rupture of a large contaminated liquid storage tank, causing soil contamination and potential groundwater contamination, as the most costly postulated event to decontaminate and remediate (other than a SFP zirconium fire). The postulated large liquid radwaste storage tank rupture event was determined to have a bounding onsite cleanup cost of approximately $50 million.

The NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of $50 million is consistent with SECY–96–256. In addition, the staff notes that there is a precedent of granting a similar exemption to other permanently shutdown and defueled power reactors. As previously stated, the staff concluded that as of October 30, 2014, sufficient irradiated fuel decay time has elapsed at KPS to decrease the probability of an onsite radiological release from a postulated zirconium fire accident to negligible levels. In addition, the licensee's proposal to reduce onsite insurance to a level of $50 million is consistent with the maximum estimated cleanup costs for the recovery from the rupture of a large liquid radwaste storage tank.

*A. Authorized by Law*

Under 10 CFR 50.12, the Commission may grant exemptions from the regulations in 10 CFR part 50, as the Commission determines are authorized by law. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, or other laws, as amended. Therefore, the exemption is authorized by law.

*B. No Undue Risk to Public Health and Safety*

The onsite property damage insurance requirements of 10 CFR 50.54(w)(1) were established to provide financial assurance that following a significant nuclear incident, onsite conditions could be stabilized and the site decontaminated. The requirements of 10 CFR 50.54(w)(1) and the existing level of onsite insurance coverage for KPS are predicated on the assumption that the reactor is operating. However, KPS is a permanently shutdown and defueled facility. The permanently defueled status of the facility has resulted in a significant reduction in the number and severity of potential accidents, and correspondingly, a significant reduction in the potential for and severity of onsite property damage. The proposed reduction in the amount of onsite insurance coverage does not impact the probability or consequences of potential accidents. The proposed level of insurance coverage is commensurate with the reduced risk and reduced cost consequences of potential nuclear accidents at KPS. Therefore, the NRC staff concludes that granting the requested exemption will not present an undue risk to the health and safety of the public.

*C. Consistent With the Common Defense and Security*

The proposed exemption would not eliminate any requirements associated with physical protection of the site and would not adversely affect DEK's ability to physically secure the site or protect special nuclear material. Physical security measures at KPS are not affected by the requested exemption. Therefore, the proposed exemption is consistent with the common defense and security.

*D. Special Circumstances*

Under 10 CFR 50.12(a)(2)(ii), special circumstances are present if the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.54(w)(1) is to provide reasonable assurance that adequate funds will be available to stabilize conditions and cover onsite cleanup costs associated with site decontamination, following an accident that results in the release of a significant amount of radiological material. Because KPS is permanently shut down and defueled, it is no longer possible for the radiological consequences of design-basis accidents or other credible events at KPS to exceed the limits of the EPA PAGs at the exclusion area boundary. The licensee has performed site-specific analyses of highly unlikely, beyond-design-basis zirconium fire accidents involving the stored irradiated fuel in the SFP. The analyses show that after October 30, 2014, the probabilities of such an accident are minimal. The NRC staff's evaluation of the licensee's analyses confirm this conclusion.

The NRC staff also finds that the licensee's proposed $50 million level of onsite insurance is consistent with the bounding cleanup and decontamination cost, as discussed in SECY–96–256, to account for hypothetical rupture of a large liquid radwaste tank at the KPS site, should such an event occur. The staff notes that KPS's technical specifications provide controls for unprotected outdoor liquid storage tanks to limit the quantity of radioactivity contained in these tanks, in the event of an uncontrolled release of the contents of these tanks. Therefore, the staff concludes that the application of the current requirements in 10 CFR 50.54(w)(1) to maintain $1.06 billion in onsite insurance coverage is not necessary to achieve the underlying purpose of the rule for the permanently shutdown and defueled KPS reactor.

Under 10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The NRC staff concludes that if the licensee was required to continue to maintain an onsite insurance level of $1.06 billion, the associated insurance premiums would be in excess of those necessary and commensurate with the radiological contamination risks posed by the site. In addition, such insurance levels would be significantly in excess of other decommissioning reactor facilities that have been granted similar exemptions by the NRC.

The NRC staff finds that compliance with the existing rule would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and are significantly in excess of those incurred by others similarly situated.

Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist.

*E. Environmental Considerations*

The NRC approval of the exemption to insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is

no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Surety, insurance, or indemnity requirements

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because reducing the licensee's onsite property damage insurance for KPS does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of KPS. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. The requirement for onsite property damage insurance may be viewed as involving surety, insurance, or indemnity matters.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

## IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants DEK an exemption from the requirements of 10 CFR 50.54(w)(1), to permit the licensee to reduce its onsite property damage insurance to a level of $50 million.

The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of April, 2015.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015–08395 Filed 4–10–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0247]**

## Information Collection: General Domestic Licenses for Byproduct Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, General Domestic Licenses for Byproduct Material.''

**DATES:** Submit comments by May 13, 2015.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information, and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–1741, email: *Vladik_Dorjets@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2014–0247 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 Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0247.
- 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 *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No ADAMS ML15040A059.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

### *B. Submitting Comments*

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''General Domestic Licenses for Byproduct Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a

person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 19, 2014, 79 FR 68917.

1. *The title of the information collection:* 10 CFR part 31, ''General Domestic Licenses for Byproduct Material.''

2. *OMB approval number:* 3150–0016

3. *Type of submission:* Extension with burden revision

4. *The form number if applicable:* Not applicable

5. *How often the collection is required or requested:* Reports are submitted as events occur. General license registration requests may be submitted at any time. Changes to the information on the registration may be submitted as they occur.

6. *Who will be required or asked to respond:* Persons receiving, possessing, using, or transferring devices containing byproduct material.

7. *The estimated number of annual responses:* 138,429 (10,929 responses + 127,500 recordkeepers).

8. *The estimated number of annual respondents:* 10,929 (971 NRC licensee respondents + 9,958 Agreement State licensee responses).

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 36,186 hours (4,843 hours for NRC licensees + 31,343 hours for Agreement State licensees).

10. *Abstract:* Part 31 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes general licenses for the possession and use of byproduct material in certain devices. General licensees are required to keep testing records and submit event reports identified in Part 31, which assist the NRC in determining with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

Dated at Rockville, Maryland, this 7th day of April, 2015.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2015–08381 Filed 4–10–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–255; NRC–2014–0216]**

## Entergy Nuclear Operations, Inc.; Palisades Nuclear Plant

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Director's decision under 10 CFR 2.206; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has issued a final director's decision with regard to a petition dated March 5, 2014, as supplemented on April 8, May 21, and September 3, 2014, filed by Mr. Michael Mulligan (the petitioner), requesting that the NRC take action with regard to Entergy Nuclear Operations, Inc. (ENO or the licensee) at Palisades Nuclear Plant (PNP). The petitioner's requests and the final director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

**DATES:** April 13, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0216 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0216. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *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:** Jennivine Rankin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1530, email: *Jennivine.Rankin@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Deputy Director, Nuclear Reactor Regulation, has issued a final director's decision (ADAMS Accession No. ML15054A365), on a petition filed by the petitioner on March 5, 2014 (ADAMS Accession No. ML14071A006), as supplemented on April 8, May 21, and September 3, 2014 (ADAMS Accession Nos. ML14143A212, ML14142A101, and ML14259A135, respectively). The petitioner requested a number of actions be taken by the NRC and the licensee for equipment failures at PNP. As the basis for the request, the petitioner stated that there have been recent plant events and equipment failures at PNP, such as parts of the primary coolant pump (PCP) impeller breaking off and lodging in the reactor vessel (RV) and flaws in the control rod drive mechanisms (CRDMs). The petitioner requested immediate action to prevent the PNP from restarting due to a piece of PCP impeller that was lodged between the RV and the flow skirt and due to flawed CRDMs.

By email dated March 19, 2014 (ADAMS Accession No. ML14083A680), the NRC staff denied the petitioner's request for immediate action to prevent PNP from restarting, based on the following factors:

1. The NRC performed an in-depth independent review of the licensee's analysis and concluded that the impeller piece did not pose a threat to safe operation of the reactor and RV.

2. The licensee replaced all of the CRDM housings prior to plant startup.

By teleconference on April 8, 2014, and again on September 3, 2014, the petitioner addressed the Petition Review Board (PRB). The meetings provided the petitioner with an opportunity to provide additional information and to clarify issues cited in the petition. The transcripts of these meeting were treated as supplements to the petition and are available in ADAMS, as previously noted.

In the agency's letter dated September 25, 2014 (ADAMS Accession No. ML14237A726), the NRC accepted the following specific issues of the petition for review under Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR):

1. Request for PNP to open every PCP for inspection and clear up all flaws.

2. Request for PNP to replace the PCPs with others designed for their intended duty.

3. Request an Office of the Inspector General (OIG) inspection on why different NRC regions have different analysis criteria for similar PCP events.

4. Request a $10 million fine over these events.

5. Request for PNP to return to yellow or red status and for the NRC to intensify its monitoring of PNP.

The NRC sent a copy of the proposed director's decision to the petitioner and the licensee for comment on January 23, 2015 (ADAMS Accession Nos. ML14338A435 and ML14338A431). The petitioner and the licensee were asked to provide comments within 15 days on any part of the proposed director's decision that was considered to be erroneous or any issues in the petition that were not addressed. Comments were received from the petitioner and are addressed in an attachment to the final director's decision.

The Deputy Director of the Office of Nuclear Reactor Regulation denied the petitioner's requests for the following actions:

1. Request for PNP to open every PCP for inspection and clear up all flaws.

2. Request for PNP to replace the PCPs with others designed for their intended duty.

3. Request a $10 million fine over these events.

4. Request for PNP to return to yellow or red status and for the NRC to intensify its monitoring of PNP.

The reasons for this decision are explained in the final director's decision DD–15–03, under 10 CFR 2.206 of the Commission's regulations. The petitioner's request for an OIG inspection on why different NRC regions have different analysis criteria for similar PCP events has been forwarded to the OIG. The NRC found no basis for taking the requested enforcement-related actions against PNP; thus, the NRC denies the petition. NRC staff did not find that the continued operation of PNP would adversely affect public health and safety. The NRC determined that the licensee's actions to date are adequate and there is reasonable assurance that the operation of the PNP will not endanger the health and safety of the public. For the performance deficiencies and inspection findings that the NRC has identified at PNP, the agency will continue to monitor the progress of the licensee's completion of corrective actions through planned inspections consistent with the NRC's ongoing reactor oversight process.

Consistent with 10 CFR 2.206(c), the NRC staff will file a copy of this final director's decision with the Secretary of the Commission for the Commission to review. As provided for in 10 CFR 2.206(c)(1), the final director's decision will constitute the Commission's final action within 25 days of the date of the decision unless the Commission, on its own motion, chooses to review the decision within that time.

Dated at Rockville, Maryland this 6th day of April 2015.

For the Nuclear Regulatory Commission.

**Jennifer Uhle,**

*Deputy Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015–08409 Filed 4–10–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0245]**

## Information Collection: Standards for Protection Against Radiation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Standards for Protection Against Radiation.''

**DATES:** Submit comments by May 13, 2015.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–1741, email: *Vladik_Dorjets@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2014–0245 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 Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0245.
- 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 ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML15036A316.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

*B. Submitting Comments*

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Standards for Protection Against Radiation.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not

required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 2, 2014, (79 FR 71450).

1. *The title of the information collection:* 10 CFR part 20, ''Standards for Protection Against Radiation.''

2. *OMB approval number:* 3150–0014.

3. *Type of submission:* Revision.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* Annually for most reports and at license termination for reports dealing with decommissioning.

6. *Who will be required or asked to respond:* NRC licensees and Agreement State licensees, including those requesting license terminations. Types of licensees include civilian commercial, industrial, academic, and medical users of nuclear materials. Licenses are issued for, among other things, the possession, use, processing, handling, and importing and exporting of nuclear materials, and for the operation of nuclear reactors.

7. *The estimated number of annual responses:* 43,530 (11,739 for reporting [1,677 NRC licensees and 10,062 Agreement State licensees], 21,018 for recordkeeping [3,003 NRC licensees and 18,015 Agreement State Licensees], and 10,773 for third-party disclosures [1,539 NRC licensees and 9,234 Agreement State licensees]).

8. *The estimated number of annual respondents:* 21,018 (3,003 NRC licensees and 18,015 Agreement State licensees).

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 640,776 hours (91,545 hours for NRC licensees and 549,231 hours for Agreement State licensees).

10. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC and by Agreement States. These standards require the establishment of radiation protection programs, maintenance of radiation protection programs, maintenance of radiation records recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC and to Agreement States of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

Dated at Rockville, Maryland, this 7th day of April, 2015.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2015–08380 Filed 4–10–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–285; NRC–2014–0159]**

## Omaha Public Power District; Fort Calhoun Station, Unit No. 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Omaha Public Power District to withdraw its application dated April 25, 2014, as supplemented by letter dated February 13, 2015, for a proposed amendment to Renewed Facility Operating License No. DPR–40. The proposed amendment would have revised Section 5.11, ''Structures Other Than Containment,'' and Appendix F, ''Classification of Structures and Equipment and Seismic Criteria,'' of the Fort Calhoun Station, Unit No. 1, Updated Safety Analysis Report.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0159 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0159. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *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:** Fred Lyon, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2296 email: *Fred.Lyon@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The NRC has granted the request of Omaha Public Power District (the licensee) to withdraw its application dated April 25, 2014, as supplemented by letter dated February 13, 2015 (ADAMS Accession Nos. ML14118A435 and ML15050A257, respectively), for a proposed amendment to Renewed Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would have revised Section 5.11, ''Structures Other Than Containment,'' and Appendix F, ''Classification of Structures and Equipment and Seismic Criteria,'' of the Updated Safety Analysis Report to clarify the licensing and design basis to permit the use of seismic floor response spectra in analysis and design of seismic Class I structures and structural elements attached to structures.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 8, 2014 (79 FR 38593). However, by letter dated April 1, 2015 (ADAMS Accession No. ML15090A743), the licensee withdrew the proposed change.

Dated at Rockville, Maryland, this 6th day of April 2015.

For the Nuclear Regulatory Commission.

**Carl F. Lyon,**

*Project Manager, Plant Licensing Branch IV–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015–08393 Filed 4–10–15; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Election Regarding Payment of Health and/or Life Insurance Premiums (Negative Net Annuity), RI 79–31, 3206–XXXX

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 60-day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection, Election Regarding Payment of Health and/or Life Insurance Premiums (Negative Net Annuity), RI 79–31. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

**DATES:** Comments are encouraged and will be accepted until June 12, 2015. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, 1900 E. Street NW., Room 2349, Washington, DC 20415–3500, Attention: Alberta Butler, or sent by email to *Alberta.Butler@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E. Street NW., Room 3316–AC, Washington, DC 20503, Attention: Cyrus S. Benson or sent by email to *Cyrus.Benson@opm.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title 5, U.S. Code, chapter 84, section 8905a, and chapter 87, section 8707 provides that the proper amount of health benefit and life insurance premiums are withheld from the annuity of retirees, survivors, and former spouses. There are instances when annuity is insufficient to withhold the cost of premiums. Title 5, Code of Federal Regulations, part 890.304(b) provide instructions for annuitants and survivors to elect a health plan with a withholding that is not in excess of the annuity. It informs individuals or their rights in the event an election is not made within a time limit. Title 5, Code of Federal Regulations part 890.806(m) addresses actions required by former spouses. Individuals have an option to elect a less expensive plan or to make direct payments. Form RI 79–31 is needed to provide the individual with an opportunity to choose a less costly plan for which deductions can be withheld from the payment from the Civil Service Retirement and Disability Fund, or to be advised of their option to make direct out-of pocket payment to the retirement fund.

The appropriate regulations for making life insurance elections that do not exceed annuity or to make direct payment to the retirement fund are found in title 5, Code of Federal Regulations, part 870–401—870–405.

This form is a combination of two forms. Rather than collect information separately, the RI 79–31 is combined to collect election decisions on health and life insurance coverage.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Election Regarding Payment of Health and/or Life Insurance Premiums (Negative Net Annuity).

*OMB Number:* 3206–XXXX.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 20 minutes.

*Total Burden Hours:* 333 hours.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2015–08460 Filed 4–10–15; 8:45 am]

**BILLING CODE 6325–38–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74668; File No. SR–CBOE–2015–032]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

April 7, 2015.

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 March 27, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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**

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt a Trading Permit Holder Regulatory Fee of $90 per month, per Regular Trading Hours [3] (''RTH'') Trading Permit, applicable to all Trading Permit Holders (''TPHs''). Specifically, the Exchange is proposing to adopt this fee as the Exchange's regulatory costs have increased and in order to help more closely cover the costs of regulating all TPHs and performing regulatory responsibilities. The Exchange believes the proposed fee amount is modest, as well as reasonable for TPHs of all sizes. The Trading Permit Holder Regulatory Fee will be non-refundable and assessed through the integrated billing system during the first week of the following month. Additionally, the Exchange notes that if a Trading Permit is issued during a calendar month after the first trading day of the month, the Trading Permit Holder Regulatory Fee for the Trading Permit for that calendar month will be prorated based on the remaining trading days in the calendar month.

Finally, as noted above, the proposed fee is applicable during RTH only. As such, the Exchange proposes to remove ''(Also applies to ETH)(37)'' from the Regulatory Fees header and relocate that language next the ''Options Regulatory Fee (''ORF'')'' and ''DPM's and Firm Designated Examining Authority Fee'' so that it is clear which Regulatory fees are applicable during ETH. The Exchange notes that no substantive change is being made by this change. Rather, the Exchange believes this proposed rule change will maintain clarity in the Fees Schedule and avoid potential confusion.

The proposed rule change is to take effect on April 1, 2015.

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 Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it is designed to recoup costs associated with performing its regulatory obligations with respect to TPHs. The proposed rule change will help the Exchange offset increased regulatory expenses, but not result in total regulatory revenue exceeding total regulatory costs. The Exchange believes it is equitable and not unfairly discriminatory because it will apply to all TPHs. Additionally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess the fee per Trading Permit because there is generally a correlation between an increased number of Trading Permits and business on the Exchange, which in turn requires more resources to regulate that business. As such, the Exchange believes assessing this fee on a per Trading Permit basis is the most equitable method of assessing this fee.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[7] 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 TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change is designed to fund the Exchange's regulatory program and to help more closely cover the costs of regulating TPHs for which the Exchange has a regulatory responsibility. Thus, the proposed changes will help the Exchange to enforce compliance of its TPHs with the Act and Exchange rules.

Finally, the Exchange believes the proposed change to relocate the language ''(Also applies to ETH)(37)'' makes clear to market participants which Regulatory fees apply during ETH and reduces potential confusion. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes any burden on competition imposed by the proposed rule change is outweighed by the need to help the Exchange to adequately fund its regulatory activities to ensure compliance with the Exchange Act.

*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–2015–032 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.

[3] Rule 1.1(qqq) defines ''Regular Trading Hours'' as the hours during which transactions in options may be made on the Exchange as set forth in Rule 6.1 (which hours are from 8:30 a.m. to either. 3:00 p.m. or 3:15 p.m. Chicago time).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–CBOE–2015–032. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–032 and should be submitted on or before May 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08379 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74666; File No. SR–BATS–2015–26]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 20.6 To Adopt a New Provision To Account for Erroneous Trades Occurring From Disruptions and/or Malfunctions of Exchange Systems

April 7, 2015.

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 April 1, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 20.6, Nullification and Adjustment of Options Transactions including Obvious Errors, to adopt a new provision to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. The proposed rule change is based on the rules of NYSE Arca, Inc. (''NYSE Arca'') and the International Securities Exchange, LLC (''ISE'').[5] Therefore, the Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6] The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 20.6, Nullification and Adjustment of Options Transactions including Obvious Errors, to adopt a new provision to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. Specifically, proposed paragraph (k) to Rule 20.6 would provide that any transaction that arises out of a ''verifiable systems disruption or malfunction'' in the use or operation of an Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by an Official. Under the proposed paragraph (k), an Official may act, on his or her own motion, to review erroneous transactions. The proposed rule change is based on the rules of NYSE Arca and the ISE.[7]

According to the proposal, in the event of any verifiable disruption or malfunction in the use or operation of an Exchange automated quotation, dissemination, execution, or communication system, in which the nullification or modification of transactions may be necessary to maintain a fair and orderly market or the protection of investors and the public interest exists, an Official, on his or her own motion, may review such transactions and declare the transactions occurring during such period null and void or adjust the price of those transaction to their Theoretical Price, as defined in paragraph (b) of Rule 20.6. Pursuant to the proposal, an Official, absent extraordinary circumstances, must initiate action under this authority within sixty (60) minutes of the occurrence of the erroneous transaction that was a result of a verifiable disruption or malfunction.

Each Options Member involved in the transaction shall be notified as soon as practicable, and any Options Member aggrieved by the action may appeal such action in accordance with the provisions of proposed renumbered paragraph (l) of Rule 20.6. Current subparagraph (k), which sets for the appeals process of decisions made by an

[10] 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).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* ISE Rule 720A *and* NYSE Arca Rule 6.89. *See also* Securities Exchange Act Release No. 72490 (June 27, 2014), 79 FR 38105 (July 3, 2014) (SR–ISE–2014–34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish New Rule 720A). The proposed rule change is also based in part on Nasdaq OMX PHLX, LLC (''PHLX'') Rule 1092(c)(ii)(A), and in addition, is substantially similar to Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.25(a)(3).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See supra* note 5.

Official [8] pursuant to Rule 20.6, would be renumbered as paragraph (l) and cross references to current paragraph (k) within Rule 20.6 would be updated to reference renumbered paragraph (l) accordingly.

The Exchange notes that the Commission recently approved amendments to Rule 20.6 [9] and that other options markets are to file proposed rule changes with the Commission to harmonize their respective obvious and catastrophic error rules with Rule 20.6. The Exchange understands that the provision it proposes to add to Rule 20.6 herein is to be retained by other options exchanges as part of their harmonized rules. Therefore, the Exchange believes it is critical to its ability to maintain fair and orderly markets and to protect investors to propose to add this provision to its rules.

The Exchange believes it is appropriate to provide the flexibility and authority provided for in proposed paragraph (k) to Rule 20.6 so as not to limit the Exchange's ability to plan for and respond to unforeseen problems and malfunctions. The proposed rule change would provide the Exchange with the same authority to nullify or adjust trades in the event of a ''verifiable disruption or malfunction'' in the use or operation of its systems as other exchanges have.[10] For this reason, the Exchange believes that, in the interest of maintaining a fair and orderly market and for the protection of investors, authority to nullify or adjust trades in these circumstances, consistent with the authority on other exchanges, is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system and promote a fair and orderly market because it would provide authority to the Exchange to nullify or adjust trades that may have resulted from a verifiable systems disruption or malfunction. The Exchange believes that it is appropriate to provide the flexibility and authority provided for in the proposed rule change so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions that may result in harm to the public. Allowing for the nullification or modification of transactions that result from verifiable disruptions and/or malfunctions of Exchange systems will offer market participants on the Exchange a level of relief not presently available. The Exchange further notes that when acting under its own motion of nullify or adjust trades pursuant to proposed paragraph (k) of Rule 20.6, the Exchange must consider whether taking such action would be in the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange also notes that proposed rule change is based on the rules of other exchanges.

*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. Rather, the Exchange believes the proposed rule change will enhance competition because it will align the Exchange's rules with the rules of other markets, including CBOE, NYSE Arca, the ISE, and PHLX. By adopting paragraph (k) to Rule 20.6 the Exchange will be in a position to treat transactions that are the result of a verifiable systems disruption or malfunction in a manner similar to other exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2015–26 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–BATS–2015–26. 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

[8] An Official is defined under current Rule 20.6(d) as ''[a]n Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this rule [20.6].''

[9] *See* Securities Exchange Act. Release No. 74556 (March 20, 2015) (SR–BATS–2014–067). The Exchange notes that a comment letter received in response to the proposed rule change suggesting that the Exchange also include a rule provision covering verifiable disruptions or malfunctions of Exchange systems as proposed herein. *See* letter from Joanna Fields, Principal, Aplomb Strategies Inc. to Brent Fields, Secretary, Commission, dated March 23, 2015.

[10] *See supra* note 5.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

post all comments on the Commission's Internet Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–26, and should be submitted on or before May 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08337 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31548; File No. 812–14437]**

## Sprott Focus Trust, Inc. and Sprott Asset Management LP; Notice of Application

April 7, 2015.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

*Applicants:* Sprott Focus Trust, Inc. (the ''Existing Fund'') and Sprott Asset Management LP (''Sprott Asset'').

*Summary of Application:* Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

*Filing Date:* The application was filed on March 27, 2015.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 1, 2015 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, Bibb L. Strench, Esq., Seward & Kissel LLP, 901 K Street NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

### Applicants' Representations

1. The Existing Fund is a Maryland corporation registered under the Act as a closed-end management investment company.[1] The Existing Fund's investment goal is long-term capital growth, which it seeks to achieve by investing in equity securities and non-convertible fixed income securities. Shares of the common stock of the Existing Fund are listed and traded on the NASDAQ Global Select Market. The Existing Fund had issued preferred stock all of which was redeemed on November 15, 2012. Applicants believe that investors in closed-end funds may prefer an investment vehicle that provides regular current income through fixed distribution policies that would be available through a Distribution Policy (as defined below).

2. Sprott Asset, a limited partnership organized under the laws of Canada, is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') as an investment adviser. Sprott Asset provides investment advisory services to the Existing Fund. Each Adviser to a Fund will be registered as an investment adviser under the Advisers Act. Sprott Asset has engaged Sprott Asset Management USA Inc., which is registered as an investment adviser under the Advisers Act, as sub-adviser for the Existing Fund.

3. Pursuant to a prior order,[2] the Existing Fund has established a periodic payout policy of paying quarterly distributions on its common stock.[3] To maintain certainty for the distribution policy of the Existing Fund and the distribution policies that other Funds may adopt in the future (each, a ''Distribution Policy''), applicants request an order to permit each Fund to make periodic distributions that include long-term capital gains as frequently as 12 times in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued.

4. Applicants state that prior to a Fund's implementing a Distribution Policy in reliance on the requested order, the board of directors (the ''Board'') of such Fund, including a

[14] 17 CFR 200.30–3(a)(12).

[1] The only existing registered closed-end investment company that currently intends to rely on the order has been named as an applicant. Applicants request that the order also apply to each other registered closed-end investment company advised or to be advised in the future by Sprott Asset or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Sprott Asset (including any successor in interest) (each such entity, including Sprott Asset, the ''Adviser'') that in the future seeks to rely on the order (such investment companies, together with the Existing Fund, are collectively, the ''Funds'' and individually, a ''Fund''). Any Fund that may rely on the order in the future will comply with the terms and conditions of the application. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] *Royce Focus Trust, Inc., et al.,* Investment Company Act Release Nos. 30447 (April 4, 2013) (notice) and 30499 (April 30, 2013) (order). The Existing Fund is seeking the requested order because it may no longer rely on this prior order as a result of the change of its investment adviser from Royce & Associates, LLC to Sprott Asset.

[3] The Existing Fund currently has no outstanding preferred stock.

majority of the directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (the ''Independent Directors''), will request, and the Adviser will provide, such information as is reasonably necessary to make an informed determination of whether the Board should adopt a proposed Distribution Policy. In the case of the Existing Fund, the Board approved a Distribution Policy substantially similar to the distribution policy that had been in place prior to the date of the application. In particular, the Board and the Independent Directors will review information regarding the purpose and terms of the Distribution Policy; the likely effects of the policy on the Fund's long-term total return (in relation to market price and its net asset value per share of common stock (''NAV'')); the expected relationship between the Fund's distribution rate on its common stock under the policy and the Fund's total return (in relation to NAV); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV; and any foreseeable material effects of the policy on the Fund's long-term total return (in relation to market price and NAV). The Independent Directors also will consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and the Fund might have with respect to the adoption or implementation of the Distribution Policy. Applicants state that, only after considering such information will the Board, including the Independent Directors, of each Fund approve a Distribution Policy and in connection with such approval will determine that the Distribution Policy is consistent with a Fund's investment objectives and in the best interests of the holders of the Fund's common stock.

5. Applicants state that the purpose of a Distribution Policy, generally, would be to permit a Fund to distribute over the course of each year, through periodic distributions in relatively equal amounts (plus any required special distributions), an amount closely approximating the total taxable income of such Fund during such year and, if so determined by its Board, all or a portion of returns of capital paid by portfolio companies to such Fund during the year. Under the Distribution Policy of a Fund, such Fund would distribute to its respective common stockholders a fixed percentage of the market price of such Fund's common stock at a particular point in time or a fixed percentage of NAV at a particular time or a fixed amount per share of common stock, any of which may be adjusted from time to time. It is anticipated that under a Distribution Policy, the minimum annual distribution rate with respect to such Fund's common stock would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for an entire calendar year and to enable the Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code (''Code'') for the calendar year, each distribution on the Fund's common stock would be at the stated rate then in effect.

6. Applicants state that prior to the implementation of a Distribution Policy for any Fund in reliance on the order, the Board of such Fund will have adopted policies and procedures under rule 38a–1 under the Act that: (i) Are reasonably designed to ensure that all notices required to be sent to the Fund's stockholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Distribution Policy include the disclosure required by condition 3(a) below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

**Applicants' Legal Analysis**

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that stockholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to stockholders and on the Internal Revenue Service Form 1099–DIV, which is sent to each common and preferred stockholder who received distributions during a particular year.

4. Applicants further state that each Fund will make the additional disclosures required by the conditions set forth below, and each Fund will adopt compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to stockholders. Applicants state that the information required by section 19(a), rule 19a–1, the Distribution Policy, the policies and procedures under rule 38a–1 noted above, and the conditions listed below will help ensure that each Fund's stockholders are provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper fund share sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate

corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that the common stock of closed-end funds often trades in the marketplace at a discount to its NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gains.

7. Applicants assert that the application of rule 19b–1 to a Distribution Policy actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of long-term capital gain dividends that a Fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient operation of a periodic distribution plan whenever that Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [4] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common stock and preferred stock outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are either fixed or determined in periodic auctions or remarketings or are periodically reset by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a specified periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation preference, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred stock for the purpose of receiving payments at the frequency bargained for, and any application of rule 19b–1 to preferred stock would be contrary to the expectation of investors.

12. Applicants request an order under section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as monthly in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund.

**Applicants' Conditions**

Applicants agree that, with respect to each Fund seeking to rely on the requested order, the order will be subject to the following conditions:

*1. Compliance Review and Reporting*

The Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order, and (ii) a material compliance matter (as defined in rule 38a–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

*2. Disclosures to Fund Stockholders*

(a) Each 19(a) Notice disseminated to the holders of the Fund's common stock, in addition to the information required by section19(a) and rule 19a–1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per share of common stock basis, together with the amounts of such distribution amount, on a per share of common stock basis and as a percentage of such distribution amount, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) the fiscal year-to-date cumulative amount of distributions, on a per share of common stock basis, together with

[4] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

the amounts of such cumulative amount, on a per share of common stock basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Distribution Policy'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income'''[5]; and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to stockholders under rule 30e-1 under the Act, the Fund will:

(i) describe the terms of the Distribution Policy (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) include the disclosure required by condition 2(a)(ii)(1) above;

(iii) state, if applicable, that the Distribution Policy provides that the Board may amend or terminate the Distribution Policy at any time without prior notice to Fund stockholders; and

(iv) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Distribution Policy and any reasonably foreseeable consequences of such termination.

(c) Each report provided to stockholders under rule 30e-1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

*3. Disclosure to Stockholders, Prospective Stockholders and Third Parties*

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Distribution Policy or distributions under the Distribution Policy by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund stockholder, prospective stockholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

*4. Delivery of 19(a) Notices to Beneficial Owners*

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

*5. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium*

If:

(a) The Fund's common stock has traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's shares of common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Directors:

[5] The disclosure in condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

(1) Will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Distribution Policy should be continued or continued after amendment;

(2) will determine whether continuation, or continuation after amendment, of the Distribution Policy is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its stockholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) Whether the Distribution Policy is accomplishing its purpose(s);

(B) the reasonably foreseeable material effects of the Distribution Policy on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(C) the Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Distribution Policy; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Distribution Policy in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

*6. Public Offerings*

The Fund will not make a public offering of the Fund's common stock other than:

(a) A rights offering below NAV to holders of the Fund's common stock;

(b) an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) an offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[6] expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date; [7] and

(ii) the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its shares of common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding shares of preferred stock as such Fund may issue.

*7. Amendments to Rule 19b–1*

The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08338 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74665; File No. SR–CBOE–2015–037]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Arbitration Forum

April 7, 2015.

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 April 1, 2015, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 substantially 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

The Exchange proposes to adopt new Rule 18.1A relating to arbitration. The text of the proposed rule change is available at the Exchange's Office of the Secretary, on the Exchange's Web site at *http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*, 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 proposes to adopt new Rule 18.1A. Specifically, the Exchange proposes to adopt new Rule 18.1A which would govern all arbitration claims submitted to the Exchange after the proposed rule change becomes operative (''Effective Date''). By way of background, the Exchange currently offers an arbitration facility for any of its Trading Permit Holders (''TPHs''), associated persons, or their customers to arbitrate disputes, claims, or controversies arising out of Exchange business. The Exchange's arbitration program is governed by Chapter XVIII of the CBOE Rules.

The Exchange recently entered into a Regulatory Services Agreement (''RSA'')

[6] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[7] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

[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).

with the Financial Industry Regulatory Authority, Inc. (''FINRA''), pursuant to which FINRA, among other things, will provide certain services pertaining to dispute resolution. As such, CBOE would cease to administer an arbitration program for all claims after the Effective Date. More specifically, all arbitration claims filed on and after the Effective Date would be administered by FINRA pursuant to the RSA and the Exchange would continue to administer its arbitration program for all claims filed prior to the Effective Date.

Additionally, the Exchange notes that the rules governing the administration of any particular arbitration would depend on the date the case was filed. This would help ensure that any person that filed an arbitration claim under a particular set of arbitration rules would continue to have the case administered pursuant to those rules through the case's conclusion. Particularly, CBOE Rules 18.1–18.37, with the exception of proposed CBOE Rule 18.1A, would continue to apply to CBOE arbitration cases pending prior to the Effective Date.[5] Thereafter, claims involving TPHs, associated persons of TPHs, and/or customers would be arbitrated under the FINRA Code of Arbitration Procedure for Customer Disputes, the FINRA Code of Arbitration Procedure for Industry Disputes (together, ''FINRA Codes of Arbitration''), and proposed new Rule 18.1A.

Proposed CBOE Rule 18.1A provides detailed guidance concerning claims involving TPHs, associated persons, and/or customers that are asserted on or after the Effective Date. First, disputes, claims, or controversies between or among CBOE TPHs and non-CBOE TPHs to resolve TPH-to-TPH, TPH-to-associated person, TPH-to-non-CBOE TPH, associated person-to-associated person, and associated person-to-non-CBOE TPH disputes arising out of or in connection with Exchange business would be arbitrated pursuant to the FINRA Codes of Arbitration. Proposed subparagraph (b) of CBOE Rule 18.1A provides that a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute, however, may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose.[6] Any type of dispute, claim, or controversy that is not permitted to be arbitrated under the FINRA Codes of Arbitration, such as class action claims, would also not be eligible for arbitration. Proposed CBOE Rule 18.1A would also apply to former CBOE TPHs and former associated persons of CBOE TPHs.

Additionally, proposed CBOE Rule 18.1A(d) would explicitly retain the Exchange's enforcement authority related to arbitration. In appropriate cases, arbitrators refer to the Exchange potential violations of the Exchange's Rules or the federal securities laws that come to their attention during and in connection with a proceeding. Proposed CBOE Rule 18.1A would specify that the Exchange would retain the ability to take action based on such referrals that may come from arbitrators in cases being arbitrated at FINRA.

Proposed CBOE Rule 18.1A(e) would also retain the substance of current CBOE Rule 18.37, regarding the obligation to honor arbitration awards. It would provide that any TPH, or associated person of any TPH, that fails to honor an award of arbitrators rendered under proposed CBOE Rule 18.1A would be subject to disciplinary proceedings in accordance with Chapter 17 of the CBOE Rules. Proposed CBOE Rule 18.1A(f) would also specify that the submission of any matter to arbitration as provided for under the Rule would in no way limit or preclude any right, action, or determination by the Exchange that it would otherwise be authorized to adopt, administer, or enforce. Proposed CBOE Rule 18.1A(c) would also provide that the requirements of FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Accounts) would apply to predispute arbitration agreements between TPHs and their customers.

Finally, the Exchange proposed adding Interpretation and Policy .04 to existing CBOE Rule 18.1, to clarify that the current CBOE arbitration rules (Rules 18.1 through 18.37), would apply only to arbitrations commenced prior to the Effective Date and would be otherwise of no force or effect. Proposed new Interpretation and Policy .04 would also clarify that all arbitrations filed prior to the Effective Date would, until concluded, continue to be administered by the Exchange.

2. Statutory Basis

The Exchange believes that 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 that the proposed rule change is consistent with the Section 6(b)(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.[8] Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[9]

In particular, the Exchange believes that the proposed rule change would facilitate the transition of the Exchange's arbitration forum to FINRA's pursuant to the RSA the Exchange recently entered into with FINRA. Additionally, the Exchange believes that the proposed rule change would streamline the arbitration process and provide for a unified and efficient arbitration forum with one set of arbitration rules and administrative procedures for all cases filed after the Effective Date. The Exchange also believes that the proposal would provide a clear framework to handle arbitrations in a manner that is designed to prevent fraudulent and manipulative acts and practices, and to promote the protection of investors and the public interest. Further, the Exchange believes that the proposed rule change would provide greater harmonization between Exchange Rules and the rules of similar substance and purpose of FINRA, resulting in less burdensome and more efficient regulatory compliance for members of both the Exchange and FINRA (''Dual Members''), removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the proposed rule change would promote the protection of investors and the public interest by continuing to provide market participants with a simple and inexpensive procedure for resolution of their controversies.

[5] The Exchange notes that there are three cases currently pending.

[6] The Exchange notes that FINRA rules currently provide that any claim alleging employment discrimination, including any sexual harassment claims, in violation of a statute, is eligible for arbitration pursuant to either a pre-dispute or a post-dispute agreement to arbitrate. In contrast, proposed Rule 18.1A(b) would permit claims to be arbitrated only when the parties have agreed to arbitrate the claim after it has arisen.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

Specifically, the Exchange notes that while CBOE would cease to administer an arbitration program, TPHs, associated persons, and their customers would still have an effective forum in which to arbitrate their disputes, claims, or controversies (*i.e.*, TPHs, associated persons, and their customers would still have the availability of an arbitration program; it would just be FINRA's program in lieu of CBOE's). The Exchange believes that FINRA maintains a robust dispute resolution system that provides a clear framework to handle arbitrations in a manner that is designed to prevent fraudulent and manipulative acts and practices and promotes the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE believes that the proposed rule change is not designed to address any competitive issues. Rather, CBOE believes that the proposed rule change is designed to facilitate the transition of the Exchange's arbitration forum to FINRA's pursuant to the RSA and streamline the arbitration process and provide for a unified and efficient arbitration forum with one set of arbitration rules and administrative procedures for all cases filed after the Effective Date. Additionally, CBOE believes that the proposed rule change would provide greater harmonization between the Exchange Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members.

*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**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] 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 shall institute proceedings under Section 19(b)(2)(B) of the Act[12] 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–2015–037 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–2015–037. 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 Web site at *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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–037 and should be submitted on or before May 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08336 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74664; File No. SR–EDGX–2015–15]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 11.8, 11.9, 11.10, 11.11, and 11.16 Regarding the Limit Up-Limit Down Plan

April 7, 2015.

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 March 26, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 the Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Rules 11.8, 11.9, 11.10, 11.11, and 11.16, in order to conform Exchange Rules to the rules of BATS Exchange, Inc. (''BZX'') and BATS Y-Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Inc. (''BYX'') as they relate to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[3]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to restructure and amend various Exchange Rules related to the applicability of the Plan in order to make the Exchange's Rules identical to the corresponding rules on BZX and BYX, as further described below. In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (''EDGA''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the ''BGM Affiliated Exchanges'').[4] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Rules 11.8, 11.9, 11.10, 11.11, and 11.16 to make such Rules identical to corresponding rules on BZX and BYX related to the Plan. The Exchange does not propose to alter its current system functionality with regard to compliance with the Plan set forth under current Exchange Rules.[5] Rather, the proposed rule change is designed to provide a consistent rule set across each of the BGM Affiliated Exchanges.[6]

Background

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.[7] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[8] As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[9] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[10] All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid (''NBB'') or National Best Offer (''NBO'') calculations.[11]

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[12] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause pursuant to Section VII of the Limit Up-Limit Down Plan, which would be applicable to all markets trading the security.[13] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock.

Proposed Amendment to Rule 11.9

Currently, Rule 11.9(a)(8) describes the priority of orders that are re-priced and displayed in accordance with the Plan. The Exchange is proposing to delete this clause and to include this information in Rule 11.16(e)(5) in order to adopt a consistent rule set as between the Exchange and the other BGM Affiliated Exchanges. The proposed rule text for Exchange Rule 11.16(e)(5) is directly based on BZX and BYX Rule 11.18(e)(5), and is described in greater detail below. The Exchange is not proposing to alter the priority handling of orders that are re-priced and displayed in accordance with the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion.

[3] *See* BZX and BYX Rules 11.18(e). *See* Securities Exchange Act Release Nos. 69084 (March 8, 2013), 77 FR 16334 (March 14, 2013) (SR–BATS–2015–015) [sic]; *and* 69088 (March 8, 2013), 77 FR 16308 (March 14, 2013) (SR–BYX–2013–010). *See also* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[4] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–043; SR–EDGA–2013–034).

[5] *See* Securities Exchange Act Release Nos. 69002 (February 27, 2013), 78 FR 14394 (March 5, 2013) (SR–EDGA–2013–08); *and* 69003 (February 27, 2013), 78 FR 14380 (March 5, 2013) (SR–EDGX–2013–08).

[6] *See* BZX and BYX Rules 11.18(e). The Exchange notes that EDGA intends to file a proposal very similar to this proposal that will align the rules related to the Plan across each of the BGM Affiliated Exchanges.

[7] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[8] The Exchange is a Participant in the Plan.

[9] *See* Section (V)(A) of the Plan.

[10] *See* Section VI(A) of the Plan.

[11] *See* Section VI(A)(3) of the Plan.

[12] *See* Section VI(B)(1) of the Plan.

[13] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

Proposed Amendment to Rule 11.10

In sum, Rule 11.10(a)(3) sets forth the general rule that no executions shall occur outside the Price Bands during Regular Trading Hours. The Exchange proposes to amend Rule 11.10(a)(3) to further state that the Exchange's procedures for handling executing, re-pricing and displaying orders in connection with the Plan are further described in proposed Rule 11.16(e), which is discussed below.

Current Rule 11.10(a)(3)(A) discusses how an order priced within the Price Bands may be executed or posted to the EDGX Book. Current Rule 11.10(a)(3)(B) explains how the Exchange will re-price an order that is priced outside of the Price Bands. The Exchange proposes to delete Rules 11.10(a)(3)(A) and (B) and replace them with Rule 11.16(e)(5). The proposed rule text for Exchange Rule 11.16(e)(5) is directly based on BZX and BYX Rule 11.18(e)(5) and is described more fully below. The Exchange is not proposing to alter the handling and re-pricing of orders that [sic] under the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion.

The Exchange also proposes to delete Rule 11.10(a)(3)(C) and does not propose to include it as part of the amended rule set. Rule 11.10(a)(3)(C) states that a description of the behavior of routable market and Limit Orders in response to the Plan is found in Rule 11.11(b)(1). The Exchange believes this provision is no longer necessary as the Exchange's procedures for handling, executing, re-pricing, and displaying orders in connection with the Plan are proposed to be described in a single rule, Rule 11.16(e), rather than multiple rules as is currently the case.

The Exchange proposes to delete Rule 11.10(a)(3)(D), which discusses the handling of orders with a Short Sale instruction [14] under the Plan, and replace it with Rule 11.16(e)(5)(E). The proposed rule text for Exchange Rule 11.16(e)(5)(E) is directly based on BZX and BYX Rule 11.18(e)(5)(E) and is described more fully below. The Exchange is not proposing to alter the handling of orders with a Short Sale instruction under the Plan, but rather, is proposing to relocate the text, with modifications, to Rule 11.16(e)(5)(E) as discussed below.

The Exchange proposes to delete Rule 11.10(a)(3)(E) and replace it with Rule 11.16(e)(2) thru (4). Current Rule 11.10(a)(3)(E) states that pursuant to Section IV of the Plan all Trading Centers in NMS Stocks, including those operated by Members of the Exchange, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in Section VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan. The proposed rule text for Exchange Rule 11.16(e)(2) thru (4) expands upon this provision and is directly based on BZX and BYX Rule 11.18(e)(2) thru (4) described more fully below.

Proposed Amendment to Rule 11.11

Rule 11.11 discusses the handling of orders that are to be routed to away trading centers. Paragraphs (b) thru (d) of Rule 11.11 discuss the routing of orders under the Plan. The Exchange proposes to delete Rules 11.11(b) thru (d) and replace them with Rule 11.16(e)(5)(D). The Exchange proposes to delete in its entirety Rule 11.11(b)(1) as this provision is no longer necessary as it is covered succinctly in new Rule 11.16(e)(5)(D). Rule 11.11(c), which discusses re-routing of orders under the Plan, will be moved to Rule 11.16(e)(5)(D)(i) with slight modifications. Rule 11.11(d), which discusses the operation of certain routing strategies under the Plan, will be moved to Rule 11.16(e)(5)(D)(ii) without change. Each of these changes are discussed in more detail below.

Proposed Amendment to Rule 11.16

The Exchange is required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. In February 2013, the Exchange amended its Rules in connection with the implementation of the Plan.[15] The Exchange now proposes to incorporate the provisions discussed above into Rule 11.16(e) in order to make the Exchange's Rules identical to the corresponding rules on BZX and BYX. The proposed amendments to Rule 11.16(e) are based on BZX and BYX Rules 11.18(e). The Exchange believes that the provisions proposed below are reasonably designed to prevent executions outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan.

First, the Exchange proposes to add Rule 11.16(e)(1) to provide that all capitalized terms not otherwise defined in paragraph (e) of the Rule shall have the meanings set forth in the Plan or Exchange Rules, as applicable. The Exchange also proposes to add Rules 11.16(e)(2) thru (4) described below. These provisions are based on BXZ and BYX Rules 11.18(e)(2) thru (4) and designed to replace deleted Rule 11.10(a)(3)(E), which states that the Exchange and its Members must establish policies and procedures that are reasonably designed to comply with the Plan. Specifically, the Exchange proposes to add Rule 11.16(e)(2) to provide that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks. Further, the Exchange proposes to add Rule 11.16(e)(3) to provide that Exchange Members shall comply with the applicable provisions of the Plan. The Exchange believes the requirements of current Rule 11.10(a)(3)(E) would be sufficiently covered in proposed Rules 11.16(e)(2) and (3), which will help ensure the compliance by its Members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.[16]

The Exchange also proposes to add Rule 11.16(e)(4) to replace deleted Rule 11.10(a)(3)(E). Rule 11.16(e)(4) would provide that the Exchange's System [17] shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan. The Exchange believes that this requirement is reasonably designed to help ensure the compliance with the limit up-limit down and trading pause requirements specified in the Plan by preventing executions outside the Price Bands as required pursuant to Section VI(A)(1) of the Plan.[18]

As mentioned above, the Exchange proposes to incorporate the provisions of current Rules 11.9(a)(8) and 11.10(a)(3)(A) and (B) within Rule 11.16(e)(5) regarding the treatment of certain trading interest on the Exchange in order to prevent executions outside the Price Bands and to comply with the Plan. The Exchange is proposing to delete Rules 11.9(a)(8) and 11.10(a)(3)(A) and (B) to include this information in Rule 11.16(e)(5) in order to adopt a consistent rule set as between the Exchange and the other BGM

[14] A ''Short Sale'' instruction is defined as ''[a]n instruction on an order which shall have the same meaning as defined in Rule 200(a) of Regulation SHO.'' *See* Exchange Rule 11.6(o).

[15] *See supra* note 7 [sic].

[16] *See* Section II(B) of the Plan.

[17] The ''System'' is defined in Exchange Rule 1.5(cc) as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[18] *See* Section VI(A)(1) of the Plan.

Affiliated Exchanges. Proposed Rule 11.16(e)(5) is based on BZX and BYX Rules 11.18(e)(5).

Current Rule 11.9(a)(8) describes the priority of orders that are re-priced and displayed in accordance with the Plan. Specifically, Rule 11.9(a)(8) states that if the Upper (Lower) Price Band moves so that the price of a buy (sell) order resting on the EDGX Book would consequently be above (below) the Upper (Lower) Price Band, such order will be re-priced and displayed at a price equal to the Upper (Lower) Price Band, provided a new timestamp, and prioritized based on its existing timestamp at the time the new Price Bands are established. If an order is resting on the EDGX Book at a price equal to the Upper (Lower) Price Band, such order will not be re-priced but will be provided a new timestamp and prioritized based on its existing timestamp at the time the new Price Bands are established.

Likewise, under proposed Rule 11.16(e)(5), when re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders. The Exchange will also provide new timestamps to resting orders at the less aggressive price to which such orders are re-priced. Any resting interest that is re-priced pursuant to Rule 11.16(e)(5) shall maintain priority ahead of interest that was originally less aggressively priced, regardless of the original timestamps for such orders. The Exchange is not proposing to alter the priority handling of orders that are re-priced and displayed in accordance with the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion. While the text of current Rule 11.9(a)(8) is not identical to proposed Rule 11.16(e)(5), the Exchange proposes to adopt language identical to BZX and BYX Rules 11.18(e)(5), which it believes more clearly describes system functionality.

Current Rules 11.10(a)(3)(A) and (B) address the handling and re-pricing of orders under the Plan. Rule 11.10(a)(3)(A) discusses how an order priced within the Price Bands may be executed or posted to the EDGX Book by stating that a non-routable buy (sell) order that is entered into the System at a price less (greater) than or equal to the Upper (Lower) Price Band will be posted to the EDGX Book or executed, unless: (i) the order includes a Time-in-Force Instruction (''TIF'') of Immediate or Cancel (''IOC'') or Fill-or-Kill (''FOK''), in which case it will be cancelled if not executed; or (ii) the User has entered instructions to cancel [19] the order. Rule 11.10(a)(3)(B) explains how the Exchange will re-price an order that is priced outside of the Price Bands by stating that a non-routable buy (sell) order at a price greater (less) than the Upper (Lower) Price Band will be re-priced and displayed at the price of the Upper (Lower) Price Band. If the price of the Upper (Lower) Price Band moves above (below) the non-routable buy (sell) order's displayed price, the buy (sell) order will not be adjusted further and will remain posted at the original price at which it was posted to the EDGX Book. If the Upper (Lower) Price Band crosses a non-routable buy (sell) order resting on the EDGX Book, the buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Likewise, proposed Rule 11.16(e)(5) discusses the re-pricing and cancellation of interest and specifically provides that the Exchange systems shall re-price and/or cancel buy (sell) interest that is priced or could be executed [20] above (below) the Upper (Lower) Price Band. The Exchange is not proposing to alter the handling or re-pricing of orders under the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion. The Exchange notes that while the format of current Rules 11.10(a)(3)(A) and (B) are not identical to that of proposed Rule 11.16(e)(5), the Exchange proposes to include the following provisions under Rule 11.16(e)(5) regarding the re-pricing or canceling of certain trading interest that are similar to BZX and BYX Rule 11.18(e)(5), which if [sic] believes continue to accurately describe system functionality and provide additional specificity, the specifics of which are described under each subsection of proposed Rule 11.16(e)(5) set forth below.

Market Orders and Orders With a TIF of IOC or FOK

Proposed Rule 11.16(e)(5)(A) would state that the System will only execute Market Orders or orders with a TIF instruction of IOC or FOK at or within the Price Bands. If a Market Order or order with a TIF instruction of IOC or FOK cannot be fully executed at or within the Price Bands, the System shall cancel any unexecuted portion of the order without posting such order to the EDGX Book. This provision is similar to current Rule 11.10(a)(3)(A). The Rule would also state that the display of Market Orders will be handled in accordance with Rule 11.8(a)(4).

Limit Orders

The operation of Limit Orders under the Plan would be set forth in Rule 11.16(e)(5)(B), which would include the following provisions.

- *Orders Not Subject to Re-Pricing.* Limit Orders will be cancelled if a User has entered instructions not to use the re-pricing process set forth in Rule 11.16(e)(5) and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band.
- *Incoming Orders.* If re-pricing is permitted based on a User's instructions, both displayable and non-displayable incoming Limit Orders to buy (sell) that are priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band.
- *Resting Orders.* The System shall re-price resting Limit Orders to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting Limit Orders to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and the original limit price of a displayed and re-priced Limit Order is at or within the Price Bands and a User has opted into the Exchange's optional multiple re-pricing process, as described in Rule 11.6(l), the System shall re-price such displayed limit interest to the most aggressive permissible price up to the order's limit price. All other displayed and non-displayed limit interest re-priced pursuant to paragraph (e) of Rule 11.16 will remain at its new price unless the Price Bands move such that the price of resting Limit Order to buy (sell) would again be above (below) the Upper (Lower) Price Band.

Orders With a Pegged Instruction [21]

Currently, the operation of orders with a Pegged instruction under the Plan is not specifically addressed in the Exchange's Rules. Therefore, the Exchange proposes to adopt Rule 11.16(e)(5)(C) which would state that orders with a Pegged instruction to buy

[19] Under the Cancel Back instruction, a User may instruct the System to immediately cancel the order when, if displayed by the System on the EDGX Book at the time of entry, or upon return to the System after being routed away, would create a violation of Rule 610(d) of Regulation NMS or Rule 201 of Regulation SHO, or the order cannot otherwise be executed or posted by the System to the EDGX Book at its limit price. *See* Exchange Rule 11.6(b).

[20] The Exchange notes that this includes any interest that is displayed and/or resting at a less aggressive price but executable at a more aggressive price, such as orders subject to price sliding and discretionary order types.

[21] The ''Pegged'' instruction is described under Rule 11.6(j).

(sell) shall peg to the specified pegging price or the Upper (Lower) Price Band, whichever is lower (higher). Rule 11.16(e)(5)(c) is similar to BZX and BYX Rules 11.18(e)(5)(C).

Routable Orders

The Exchange proposes to delete Rules 11.11(b) thru (d), which discuss the routing of orders under the Plan, and replace them with Rule 11.16(e)(5)(D). The Exchange is not proposing any changes to its routing functionality in connection with the implementation of the Plan. The Exchange proposes to delete in its entirety Rule 11.11(b)(1), which states when an order may be routed under the Plan, as these provisions are no longer necessary as they are covered succinctly in new Rule 11.16(e)(5)(D). Rule 11.16(e)(5)(D) would state that if routing is permitted based on a User's instructions, orders shall be routed away from the Exchange pursuant to Rule 11.11, provided that the System shall not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band.[22] Rule 11.11(c), which discusses re-routing of orders under the Plan, will be moved to Rule 11.16(e)(5)(D)(i) with slight modifications. Current Rule 11.11(c) states that for routing strategies that access all Protected Quotations, when the Upper (Lower) Price Band adjusts such that the NBO (NBB) becomes executable, a routable buy (sell) Market or marketable Limit Order will be eligible to be re-routed by the Exchange. Likewise, Rule 11.16(e)(5)(D)(i) would state that when the Upper (Lower) Price Band adjusts such that the NBO (NBB) becomes executable, a routable buy (sell) Market or marketable Limit Order will be eligible to be re-routed by the Exchange if such order contains an Aggressive [23] or Super Aggressive [24] instruction.[25] Rule 11.11(d), which discusses the operation of certain routing strategies under the Plan, will be moved to Rule 11.16(e)(5)(D)(ii) without change. Rule 11.16(e)(5)(D)(ii) would state that routing strategies SWPA and SWPB (together, ''SWP''), as described in Rule 11.11(g), are eligible for routing in accordance with the Plan as follows: the System will immediately cancel orders utilizing an SWP routing strategy when an order to buy utilizing an SWP routing strategy has a limit price that is greater than the Upper Price Band or if a sell order utilizing an SWP routing strategy has a limit price that is less than the Lower Price Band. Proposed Rule 11.16(e)(5)(D)(ii) is similar to BZX and BYX Rule 11.13(a)(3)(I).[26]

Orders With a Short Sale Instruction

The Exchange proposes to replace current Rule 11.10(a)(3)(D), which discusses the handling of orders with a Short Sale instruction under the Plan, with proposed Rule 11.16(e)(5)(E). The proposed rule text for Exchange Rule 11.16(e)(5)(E) is directly based on BZX and BYX Rule 11.18(e)(5)(E). Current Rule 11.10(a)(3)(D) states that where a short sale order is entered into the System with a limit price below the Lower Price Band and a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System will re-price such order to the Lower Price Band as long as the Lower Price Band is at a Permitted Price.[27] When an order with a Short Sale instruction is entered into the System with a limit price above the Lower Price Band and a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System will re-price such order, if necessary, at a Permitted Price. Likewise, proposed Rule 11.16(e)(5)(E) would state that where a short sale price restriction under Rule 201 of Regulation SHO is in effect, orders with a Short Sale instruction priced below the Lower Price Band shall be re-priced to the higher of the Lower Price Band or the Permitted Price. The Exchange is not proposing to alter the handling of orders with a Short Sale instruction that under the Plan, but rather, is proposing to relocate the text, with modifications, to Rule 11.16(e)(5)(E) discussed above.

Other Amendments to Rule 11.16

The Exchange also proposes to relocate Rule 11.16(c), which discusses the re-opening of trading following a trading halt, to proposed Rule 11.16(e)(6), with minor modifications. Current Rule 11.16(c) states that the re-opening of trading following a trading halt will be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its Members. The Exchange recently codified its opening process, including its re-opening process follow a halt, suspension or pause, under Rule 11.7.[28] Therefore, with respect to the re-opening of trading following a Trading Pause, the Exchange proposes to adopt Rule 11.16(e)(6) to provide that the Exchange shall re-open the security as set forth in Rule 11.7(e), which is the Exchange's Rule describing the Exchange's re-opening process following a trading halt, suspension or pause.

The Exchange also proposes to delete Rule 11.16(d) which discusses when the Exchange may resume trading where the Primary Listing Market issues an individual stock trading pause and how individual stock trading pauses are to be handled during Phase I of the Plan. Interpretation and Policy .01 to Rule 11.16 states that the provisions of paragraph (d) of this Rule shall be in effect during a pilot set to end on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. Phase I of the Plan has expired and the Exchange, therefore, proposes to delete Rule 11.16(d) as well as Interpretation and Policy .01 to Rule 11.16 as they are no longer relevant.

Lastly, the Exchange proposes the following additional amendments to Rule 11.16: (i) renumber paragraph (f) as (d); (ii) delete current Rule 11.16(e) and replace it with new paragraph (f) providing that in the event of a trading halt, all orders will remain on the EDGA [sic] Book unless cancelled by the User; and (iii) adopt paragraph (g), which would state that all times referenced in Rule 11.16 shall be Eastern Time.

Ministerial Changes

In light of the above restructuring of the Exchange Rules, the Exchange proposes the following ministerial changes to update cross references to Rules that are to be deleted or relocated as described above:

- amend Rule 11.8(a)(4) regarding the display of Market Orders to update a cross-reference to current Rule 11.10(a)(3)(A) to proposed Rule 11.16(e)(5),
- amend Rule 11.8(d)(7) regarding the operation of MidPoint Match Orders under the Plan to update a cross-

[22] This provision shall also replace current Rule 11.10(a)(3)(C) which states that the description of the behavior of routable Market Orders and Limit Orders in response to the Plan is set forth in Rule 11.11(b)(1).

[23] The ''Aggressive'' instruction is described under Rule 11.6(n)(1).

[24] The ''Super Aggressive'' instruction is described under Rule 11.6(n)(2).

[25] The Exchange notes that this provision is not included in BZX or BYX Rule 11.18(e), but the Exchange believes it provides additional detail that was included in current Exchange Rule 11.11(c) that is helpful to retain in proposed Rule 11.16(e)(5)(D)(i).

[26] The Exchange notes that it proposal to include current Rule 11.11(d) within proposed Rule 11.16(e)(5)(D)(ii), rather than within its Rule 11.11(g) which describes each of its routing strategies, differs from the location of the same provision under BZX and BYX Rule 11.13(a)(3), which describes BZX and BYX's routing strategies.

[27] The term ''Permitted Price'' is defined in Rule 11.6(k).

[28] *See* Securities Exchange Act Release Nos. 73468 (October 29, 2014), 79 FR 65450 (November 4, 2014) (SR–EDGX–2014–18); *and* 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (SR–EDGA–2014–20).

reference to current Rule 11.10(a)(3) to proposed Rule 11.16(e), and

• amend Rule 11.9(a)(2)(D)(ii) regarding the priority of Market Orders displayed on the EDGX Book to delete a cross-reference to current Rule 11.10(a)(3)(A).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[29] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[30] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange does not propose to alter its current system functionality with regard to compliance with the Plan set forth under current Exchange Rules. Rather, the proposed rule change is designed to provide a consistent rule set across each of the BGM Affiliated Exchanges. As mentioned above, the proposed rule changes, combined with the planned filing for EDGA,[31] would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the compliance with the Plan across each of the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA, BZX and/or BYX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules and across each BGM Affiliated Exchange with respect to the Plan, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Members, meaning that the proposed rule change is equitable and will promote fairness in the market place.

Finally, the proposal to remove the references to individual stock trading pauses promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. By eliminating the reference to trading pauses outside the scope of the Plan in its rules, the Exchange will help to alleviate any potential confusion with respect to such pauses, particularly in light of the implementation of the Plan. The proposed rule change is also consistent with Section 11A(a)(1) of the Act [32] in that it seeks to assure fair competition among brokers and dealers and exchange markets.

Finally, the Exchange believes that the non-substantive, ministerial changes discussed above will contribute to the protection of investors and the public interest by helping to avoid confusion with respect to Exchange Rules.

*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, allowing the Exchange to implement substantively identical rules across each of the BGM Affiliated Exchanges regarding the Plan does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, BZX, and EDGA rules of similar purpose. The proposed rule change should, therefore, resulting in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Members, which will further enhance competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and subparagraph (f)(6) of Rule 19b–4 thereunder.[34]

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–EDGX–2015–15 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–EDGX–2015–15. 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 Web site (*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

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* supra note 8 [sic].

[32] 15 U.S.C. 78k–1(a)(1).

[33] 15 U.S.C. 78s(b)(3)(a)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–15, and should be submitted on or before May 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08335 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74669; File No. SR–CBOE–2015–038]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

April 7, 2015.

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 April 1, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*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 Exchange proposes to amend its Fees Schedule, effective April 1, 2015. Specifically, the Exchange proposes to amend the Complex Order Book (''COB'') Taker Surcharge. By way of background, the COB Taker Surcharge is a $0.05 per contract per side surcharge for non-customer complex order executions that take liquidity from the COB in all underlying classes except OEX, XEO, SPX (including SPXW), SPXpm, SRO, VIX, VXST, Volatility Indexes and binary options (''Underlying Symbol List A [3]'') and mini-options. Additionally, the COB Taker Surcharge is not assessed on non-customer complex order executions in the Complex Order Auction (''COA''), the Automated Aim Mechanism (''AIM''), orders originating from a Floor Broker PAR, or electronic executions against single leg markets. The Exchange proposes to exclude from the COB Taker Surcharge, stock-option order executions. Eliminating the surcharge for stock-option orders will allow Trading Permit Holders (''TPHs'') who engage in stock-option order executions the opportunity to pay lower fees for such transactions and provide greater incentives for such trading.

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 facilitation 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.

The Exchange believes that the proposal to exclude from the COB Taker Surcharge stock-option orders is reasonable because it will allow TPHs who engage in stock-option order trading the opportunity to pay lower fees for such transactions. It is equitable and not unfairly discriminatory because it is applied to all TPHs equally. Additionally, the Exchange believes the proposed change is designed to attract greater stock-option order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants.

*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 the proposed change applies to all TPHs. The Exchange does not believe

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As of April 1, 2015, Underlying Symbol List A will also include the Russell 2000 Index (''RUT'').

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

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 the proposed change is intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE 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 [7] and paragraph (f) of Rule 19b–4 [8] 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–2015–038 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–CBOE–2015–038. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–038 and should be submitted on or before May 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08340 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74663; File No. SR–EDGA–2015–15]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 11.8, 11.9, 11.10, 11.11, and 11.16 Regarding the Limit Up-Limit Down Plan

April 7, 2015.

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 March 27, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 the Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Rules 11.8, 11.9, 11.10, 11.11, and 11.16, in order to conform Exchange Rules to the rules of BATS Exchange, Inc. (''BZX'') and BATS Y-Exchange, Inc. (''BYX'') as they relate to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[3]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to restructure and amend various Exchange Rules related to the applicability of the Plan

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BZX and BYX Rules 11.18(e). *See* Securities Exchange Act Release Nos. 69084 (March 8, 2013), 77 FR 16334 (March 14, 2013) (SR–BATS–2015–015) [sic]; *and* 69088 (March 8, 2013), 77 FR 16308 (March 14, 2013) (SR–BYX–2013–010). *See also* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

identical to the corresponding rules on BZX and BYX, as further described below. In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (''EDGA'') [sic], received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the ''BGM Affiliated Exchanges'').[4] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Rules 11.8, 11.9, 11.10, 11.11, and 11.16 to make such Rules identical to corresponding rules on BZX and BYX related to the Plan. The Exchange does not propose to alter its current system functionality with regard to compliance with the Plan set forth under current Exchange Rules.[5] Rather, the proposed rule change is designed to provide a consistent rule set across each of the BGM Affiliated Exchanges.[6]

Background

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.[7] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[8] As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[9] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[10] All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid (''NBB'') or National Best Offer (''NBO'') calculations.[11]

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[12] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause pursuant to Section VII of the Limit Up-Limit Down Plan, which would be applicable to all markets trading the security.[13] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock.

Proposed Amendment to Rule 11.9

Currently, Rule 11.9(a)(8) describes the priority of orders that are re-priced and displayed in accordance with the Plan. The Exchange is proposing to delete this clause and to include this information in Rule 11.16(e)(5) in order to adopt a consistent rule set as between the Exchange and the other BGM Affiliated Exchanges. The proposed rule text for Exchange Rule 11.16(e)(5) is directly based on BZX and BYX Rule 11.18(e)(5), and is described in greater detail below. The Exchange is not proposing to alter the priority handling of orders that are re-priced and displayed in accordance with the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion.

Proposed Amendment to Rule 11.10

In sum, Rule 11.10(a)(3) sets forth the general rule that no executions shall occur outside the Price Bands during Regular Trading Hours. The Exchange proposes to amend Rule 11.10(a)(3) to further state that the Exchange's procedures for handling executing, re-pricing and displaying orders in connection with the Plan are further described in proposed Rule 11.16(e), which is discussed below.

Current Rule 11.10(a)(3)(A) discusses how an order priced within the Price Bands may be executed or posted to the EDGA Book. Current Rule 11.10(a)(3)(B) explains how the Exchange will re-price an order that is priced outside of the Price Bands. The Exchange proposes to delete Rules 11.10(a)(3)(A) and (B) and replace them with Rule 11.16(e)(5). The proposed rule text for Exchange Rule 11.16(e)(5) is directly based on BZX and BYX Rule 11.18(e)(5) and is described more fully below. The Exchange is not proposing to alter the handling and re-pricing of orders that [sic] under the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion.

The Exchange also proposes to delete Rule 11.10(a)(3)(C) and does not propose to include it as part of the amended rule set. Rule 11.10(a)(3)(C) states that a description of the behavior of routable market and Limit Orders in response to the Plan is found in Rule 11.11(b)(1). The Exchange believes this provision is no longer necessary as the Exchange's procedures for handling, executing, re-pricing, and displaying orders in connection with the Plan are proposed to be described in a single rule, Rule 11.16(e), rather than multiple rules as is currently the case.

[4] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–043; SR–EDGA–2013–034).

[5] *See* Securities Exchange Act Release Nos. 69002 (February 27, 2013), 78 FR 14394 (March 5, 2013) (SR–EDGA–2013–08); *and* 69003 (February 27, 2013), 78 FR 14380 (March 5, 2013) (SR–EDGX–2013–08).

[6] *See* BZX and BYX Rules 11.18(e). The Exchange notes that EDGA [sic] intends to file a proposal very similar to this proposal that will align the rules related to the Plan across each of the BGM Affiliated Exchanges.

[7] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[8] The Exchange is a Participant in the Plan.

[9] *See* Section (V)(A) of the Plan.

[10] *See* Section VI(A) of the Plan.

[11] *See* Section VI(A)(3) of the Plan.

[12] *See* Section VI(B)(1) of the Plan.

[13] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

The Exchange proposes to delete Rule 11.10(a)(3)(D), which discusses the handling of orders with a Short Sale instruction [14] under the Plan, and replace it with Rule 11.16(e)(5)(E). The proposed rule text for Exchange Rule 11.16(e)(5)(E) is directly based on BZX and BYX Rule 11.18(e)(5)(E) and is described more fully below. The Exchange is not proposing to alter the handling of orders with a Short Sale instruction under the Plan, but rather, is proposing to relocate the text, with modifications, to Rule 11.16(e)(5)(E) as discussed below.

The Exchange proposes to delete Rule 11.10(a)(3)(E) and replace it with Rule 11.16(e)(2) thru (4). Current Rule 11.10(a)(3)(E) states that pursuant to Section IV of the Plan all Trading Centers in NMS Stocks, including those operated by Members of the Exchange, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in Section VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan. The proposed rule text for Exchange Rule 11.16(e)(2) thru (4) expands upon this provision and is directly based on BZX and BYX Rule 11.18(e)(2) thru (4) described more fully below.

Proposed Amendment to Rule 11.11

Rule 11.11 discusses the handling of orders that are to be routed to away trading centers. Paragraphs (b) thru (d) of Rule 11.11 discuss the routing of orders under the Plan. The Exchange proposes to delete Rules 11.11(b) thru (d) and replace them with Rule 11.16(e)(5)(D). The Exchange proposes to delete in its entirety Rule 11.11(b)(1) as this provision is no longer necessary as it is covered succinctly in new Rule 11.16(e)(5)(D). Rule 11.11(c), which discusses re-routing of orders under the Plan, will be moved to Rule 11.16(e)(5)(D)(i) with slight modifications. Rule 11.11(d), which discusses the operation of certain routing strategies under the Plan, will be moved to Rule 11.16(e)(5)(D)(ii) without change. Each of these changes are discussed in more detail below.

Proposed Amendment to Rule 11.16

The Exchange is required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. In February 2013, the Exchange amended its Rules in connection with the implementation of the Plan.[15] The Exchange now proposes to incorporate the provisions discussed above into Rule 11.16(e) in order to make the Exchange's Rules identical to the corresponding rules on BZX and BYX. The proposed amendments to Rule 11.16(e) are based on BZX and BYX Rules 11.18(e). The Exchange believes that the provisions proposed below are reasonably designed to prevent executions outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan.

First, the Exchange proposes to add Rule 11.16(e)(1) to provide that all capitalized terms not otherwise defined in paragraph (e) of the Rule shall have the meanings set forth in the Plan or Exchange Rules, as applicable. The Exchange also proposes to add Rules 11.16(e)(2) thru (4) described below. These provisions are based on BXZ and BYX Rules 11.18(e)(2) thru (4) and designed to replace deleted Rule 11.10(a)(3)(E), which states that the Exchange and its Members must establish policies and procedures that are reasonably designed to comply with the Plan. Specifically, the Exchange proposes to add Rule 11.16(e)(2) to provide that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks. Further, the Exchange proposes to add Rule 11.16(e)(3) to provide that Exchange Members shall comply with the applicable provisions of the Plan. The Exchange believes the requirements of current Rule 11.10(a)(3)(E) would be sufficiently covered in proposed Rules 11.16(e)(2) and (3), which will help ensure the compliance by its Members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.[16]

The Exchange also proposes to add Rule 11.16(e)(4) to replace deleted Rule 11.10(a)(3)(E). Rule 11.16(e)(4) would provide that the Exchange's System [17] shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan. The Exchange believes that this requirement is reasonably designed to help ensure the compliance with the limit up-limit down and trading pause requirements specified in the Plan by preventing executions outside the Price Bands as required pursuant to Section VI(A)(1) of the Plan.[18]

As mentioned above, the Exchange proposes to incorporate the provisions of current Rules 11.9(a)(8) and 11.10(a)(3)(A) and (B) within Rule 11.16(e)(5) regarding the treatment of certain trading interest on the Exchange in order to prevent executions outside the Price Bands and to comply with the Plan. The Exchange is proposing to delete Rules 11.9(a)(8) and 11.10(a)(3)(A) and (B) to include this information in Rule 11.16(e)(5) in order to adopt a consistent rule set as between the Exchange and the other BGM Affiliated Exchanges. Proposed Rule 11.16(e)(5) is based on BZX and BYX Rules 11.18(e)(5).

Current Rule 11.9(a)(8) describes the priority of orders that are re-priced and displayed in accordance with the Plan. Specifically, Rule 11.9(a)(8) states that if the Upper (Lower) Price Band moves so that the price of a buy (sell) order resting on the EDGA Book would consequently be above (below) the Upper (Lower) Price Band, such order will be re-priced and displayed at a price equal to the Upper (Lower) Price Band, provided a new timestamp, and prioritized based on its existing timestamp at the time the new Price Bands are established. If an order is resting on the EDGA Book at a price equal to the Upper (Lower) Price Band, such order will not be re-priced but will be provided a new timestamp and prioritized based on its existing timestamp at the time the new Price Bands are established.

Likewise, under proposed Rule 11.16(e)(5), when re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders. The Exchange will also provide new timestamps to resting orders at the less aggressive price to which such orders are re-priced. Any resting interest that is re-priced pursuant to Rule 11.16(e)(5) shall maintain priority ahead of interest that was originally less aggressively priced, regardless of the original timestamps for such orders. The Exchange is not proposing to alter the priority handling of orders that are re-priced and displayed in accordance with the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion. While the text of

[14] A ''Short Sale'' instruction is defined as ''[a]n instruction on an order which shall have the same meaning as defined in Rule 200(a) of Regulation SHO.'' *See* Exchange Rule 11.6(o).

[15] *See supra* note 7 [sic].

[16] *See* Section II(B) of the Plan.

[17] The ''System'' is defined in Exchange Rule 1.5(cc) as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[18] *See* Section VI(A)(1) of the Plan.

current Rule 11.9(a)(8) is not identical to proposed Rule 11.16(e)(5), the Exchange proposes to adopt language identical to BZX and BYX Rules 11.18(e)(5), which it believes more clearly describes system functionality.

Current Rules 11.10(a)(3)(A) and (B) address the handling and re-pricing of orders under the Plan. Rule 11.10(a)(3)(A) discusses how an order priced within the Price Bands may be executed or posted to the EDGA Book by stating that a non-routable buy (sell) order that is entered into the System at a price less (greater) than or equal to the Upper (Lower) Price Band will be posted to the EDGA Book or executed, unless: (i) the order includes a Time-in-Force Instruction (''TIF'') of Immediate or Cancel (''IOC'') or Fill-or-Kill (''FOK''), in which case it will be cancelled if not executed; or (ii) the User has entered instructions to cancel [19] the order. Rule 11.10(a)(3)(B) explains how the Exchange will re-price an order that is priced outside of the Price Bands by stating that a non-routable buy (sell) order at a price greater (less) than the Upper (Lower) Price Band will be re-priced and displayed at the price of the Upper (Lower) Price Band. If the price of the Upper (Lower) Price Band moves above (below) the non-routable buy (sell) order's displayed price, the buy (sell) order will not be adjusted further and will remain posted at the original price at which it was posted to the EDGA Book. If the Upper (Lower) Price Band crosses a non-routable buy (sell) order resting on the EDGA Book, the buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Likewise, proposed Rule 11.16(e)(5) discusses the re-pricing and cancellation of interest and specifically provides that the Exchange systems shall re-price and/or cancel buy (sell) interest that is priced or could be executed [20] above (below) the Upper (Lower) Price Band. The Exchange is not proposing to alter the handling or re-pricing of orders under the Plan, but rather, is proposing to adopt rule text that is identical to that of its affiliated exchanges to reduce potential confusion. The Exchange notes that while the format of current Rules 11.10(a)(3)(A) and (B) are not identical to that of proposed Rule 11.16(e)(5), the Exchange proposes to include the following provisions under Rule 11.16(e)(5) regarding the re-pricing or canceling of certain trading interest that are similar to BZX and BYX Rule 11.18(e)(5), which if [sic] believes continue to accurately describe system functionality and provide additional specificity, the specifics of which are described under each subsection of proposed Rule 11.16(e)(5) set forth below.

Market Orders and Orders With a TIF of IOC or FOK

Proposed Rule 11.16(e)(5)(A) would state that the System will only execute Market Orders or orders with a TIF instruction of IOC or FOK at or within the Price Bands. If a Market Order or order with a TIF instruction of IOC or FOK cannot be fully executed at or within the Price Bands, the System shall cancel any unexecuted portion of the order without posting such order to the EDGA Book. This provision is similar to current Rule 11.10(a)(3)(A). The Rule would also state that the display of Market Orders will be handled in accordance with Rule 11.8(a)(4).

Limit Orders

The operation of Limit Orders under the Plan would be set forth in Rule 11.16(e)(5)(B), which would include the following provisions.

- *Orders Not Subject to Re-Pricing.* Limit Orders will be cancelled if a User has entered instructions not to use the re-pricing process set forth in Rule 11.16(e)(5) and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band.
- *Incoming Orders.* If re-pricing is permitted based on a User's instructions, both displayable and non-displayable incoming Limit Orders to buy (sell) that are priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band.
- *Resting Orders.* The System shall re-price resting Limit Orders to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting Limit Orders to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and the original limit price of a displayed and re-priced Limit Order is at or within the Price Bands and a User has opted into the Exchange's optional multiple re-pricing process, as described in Rule 11.6(l), the System shall re-price such displayed limit interest to the most aggressive permissible price up to the order's limit price. All other displayed and non-displayed limit interest re-priced pursuant to paragraph (e) of Rule 11.16 will remain at its new price unless the Price Bands move such that the price of resting Limit Order to buy (sell) would again be above (below) the Upper (Lower) Price Band.

Orders With a Pegged Instruction [21]

Currently, the operation of orders with a Pegged instruction under the Plan is not specifically addressed in the Exchange's Rules. Therefore, the Exchange proposes to adopt Rule 11.16(e)(5)(C) which would state that orders with a Pegged instruction to buy (sell) shall peg to the specified pegging price or the Upper (Lower) Price Band, whichever is lower (higher). Rule 11.16(e)(5)(c) is similar to BZX and BYX Rules 11.18(e)(5)(C).

Routable Orders

The Exchange proposes to delete Rules 11.11(b) thru (d), which discuss the routing of orders under the Plan, and replace them with Rule 11.16(e)(5)(D). The Exchange is not proposing any changes to its routing functionality in connection with the implementation of the Plan. The Exchange proposes to delete in its entirety Rule 11.11(b)(1), which states when an order may be routed under the Plan, as these provisions are no longer necessary as they are covered succinctly in new Rule 11.16(e)(5)(D). Rule 11.16(e)(5)(D) would state that if routing is permitted based on a User's instructions, orders shall be routed away from the Exchange pursuant to Rule 11.11, provided that the System shall not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band.[22] Rule 11.11(c), which discusses re-routing of orders under the Plan, will be moved to Rule 11.16(e)(5)(D)(i) with slight modifications. Current Rule 11.11(c) states that for routing strategies that access all Protected Quotations, when the Upper (Lower) Price Band adjusts such that the NBO (NBB) becomes executable, a routable buy (sell) Market or marketable Limit Order will be eligible to be re-routed by the Exchange. Likewise, Rule 11.16(e)(5)(D)(i) would state that when the Upper (Lower) Price

[19] Under the Cancel Back instruction, a User may instruct the System to immediately cancel the order when, if displayed by the System on the EDGA Book at the time of entry, or upon return to the System after being routed away, would create a violation of Rule 610(d) of Regulation NMS or Rule 201 of Regulation SHO, or the order cannot otherwise be executed or posted by the System to the EDGA Book at its limit price. *See* Exchange Rule 11.6(b).

[20] The Exchange notes that this includes any interest that is displayed and/or resting at a less aggressive price but executable at a more aggressive price, such as orders subject to price sliding and discretionary order types.

[21] The ''Pegged'' instruction is described under Rule 11.6(j).

[22] This provision shall also replace current Rule 11.10(a)(3)(C) which states that the description of the behavior of routable Market Orders and Limit Orders in response to the Plan is set forth in Rule 11.11(b)(1).

Band adjusts such that the NBO (NBB) becomes executable, a routable buy (sell) Market or marketable Limit Order will be eligible to be re-routed by the Exchange if such order contains an Aggressive [23] or Super Aggressive [24] instruction.[25] Rule 11.11(d), which discusses the operation of certain routing strategies under the Plan, will be moved to Rule 11.16(e)(5)(D)(ii) without change. Rule 11.16(e)(5)(D)(ii) would state that routing strategies SWPA and SWPB (together, ''SWP''), as described in Rule 11.11(g), are eligible for routing in accordance with the Plan as follows: the System will immediately cancel orders utilizing an SWP routing strategy when an order to buy utilizing an SWP routing strategy has a limit price that is greater than the Upper Price Band or if a sell order utilizing an SWP routing strategy has a limit price that is less than the Lower Price Band. Proposed Rule 11.16(e)(5)(D)(ii) is similar to BZX and BYX Rule 11.13(a)(3)(I).[26]

Orders With a Short Sale Instruction

The Exchange proposes to replace current Rule 11.10(a)(3)(D), which discusses the handling of orders with a Short Sale instruction under the Plan, with proposed Rule 11.16(e)(5)(E). The proposed rule text for Exchange Rule 11.16(e)(5)(E) is directly based on BZX and BYX Rule 11.18(e)(5)(E). Current Rule 11.10(a)(3)(D) states that where a short sale order is entered into the System with a limit price below the Lower Price Band and a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System will re-price such order to the Lower Price Band as long as the Lower Price Band is at a Permitted Price.[27] When an order with a Short Sale instruction is entered into the System with a limit price above the Lower Price Band and a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System will re-price such order, if necessary, at a Permitted Price. Likewise, proposed Rule 11.16(e)(5)(E) would state that where a short sale price restriction under Rule 201 of Regulation SHO is in effect, orders with a Short Sale instruction priced below the Lower Price Band shall be re-priced to the higher of the Lower Price Band or the Permitted Price. The Exchange is not proposing to alter the handling of orders with a Short Sale instruction that under the Plan, but rather, is proposing to relocate the text, with modifications, to Rule 11.16(e)(5)(E) discussed above.

Other Amendments to Rule 11.16

The Exchange also proposes to relocate Rule 11.16(c), which discusses the re-opening of trading following a trading halt, to proposed Rule 11.16(e)(6), with minor modifications. Current Rule 11.16(c) states that the re-opening of trading following a trading halt will be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its Members. The Exchange recently codified its opening process, including its re-opening process follow a halt, suspension or pause, under Rule 11.7.[28] Therefore, with respect to the re-opening of trading following a Trading Pause, the Exchange proposes to adopt Rule 11.16(e)(6) to provide that the Exchange shall re-open the security as set forth in Rule 11.7(e), which is the Exchange's Rule describing the Exchange's re-opening process following a trading halt, suspension or pause.

The Exchange also proposes to delete Rule 11.16(d) which discusses when the Exchange may resume trading where the Primary Listing Market issues an individual stock trading pause and how individual stock trading pauses are to be handled during Phase I of the Plan. Interpretation and Policy .01 to Rule 11.16 states that the provisions of paragraph (d) of this Rule shall be in effect during a pilot set to end on the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. Phase I of the Plan has expired and the Exchange, therefore, proposes to delete Rule 11.16(d) as well as Interpretation and Policy .01 to Rule 11.16 as they are no longer relevant.

Lastly, the Exchange proposes the following additional amendments to Rule 11.16: (i) Renumber paragraph (f) as (d); (ii) delete current Rule 11.16(e) and replace it with new paragraph (f) providing that in the event of a trading halt, all orders will remain on the EDGA Book unless cancelled by the User; and (iii) adopt paragraph (g), which would state that all times referenced in Rule 11.16 shall be Eastern Time.

Ministerial Changes

In light of the above restructuring of the Exchange Rules, the Exchange proposes the following ministerial changes to update cross references to Rules that are to be deleted or relocated as described above:

- Amend Rule 11.8(a)(4) regarding the display of Market Orders to update a cross-reference to current Rule 11.10(a)(3)(A) to proposed Rule 11.16(e)(5), and
- amend Rule 11.9(a)(2)(C)(ii) regarding the priority of Market Orders displayed on the EDGA Book to delete a cross-reference to current Rule 11.10(a)(3)(A).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[29] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[30] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange does not propose to alter its current system functionality with regard to compliance with the Plan set forth under current Exchange Rules. Rather, the proposed rule change is designed to provide a consistent rule set across each of the BGM Affiliated Exchanges. As mentioned above, the proposed rule changes, combined with the planned filing for EDGA [sic],[31] would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the compliance with the Plan across each of the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGX, BZX and/or BYX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of

[23] The ''Aggressive'' instruction is described under Rule 11.6(n)(1).

[24] The ''Super Aggressive'' instruction is described under Rule 11.6(n)(2).

[25] The Exchange notes that this provision is not included in BZX or BYX Rule 11.18(e), but the Exchange believes it provides additional detail that was included in current Exchange Rule 11.11(c) that is helpful to retain in proposed Rule 11.16(e)(5)(D)(i).

[26] The Exchange notes that its proposal to include current Rule 11.11(d) within proposed Rule 11.16(e)(5)(D)(ii), rather than within its Rule 11.11(g) which describes each of its routing strategies, differs from the location of the same provision under BZX and BYX Rule 11.13(a)(3), which describes BZX and BYX's routing strategies.

[27] The term ''Permitted Price'' is defined in Rule 11.6(k).

[28] *See* Securities Exchange Act Release Nos. 73468 (October 29, 2014), 79 FR 65450 (November 4, 2014) (SR–EDGX–2014–18); *and* 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (SR–EDGA–2014–20).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* supra note 8 [sic].

Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules and across each BGM Affiliated Exchange with respect to the Plan, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Members, meaning that the proposed rule change is equitable and will promote fairness in the market place.

Finally, the proposal to remove the references to individual stock trading pauses promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. By eliminating the reference to trading pauses outside the scope of the Plan in its rules, the Exchange will help to alleviate any potential confusion with respect to such pauses, particularly in light of the implementation of the Plan. The proposed rule change is also consistent with Section 11A(a)(1) of the Act [32] in that it seeks to assure fair competition among brokers and dealers and exchange markets.

Finally, the Exchange believes that the non-substantive, ministerial changes discussed above will contribute to the protection of investors and the public interest by helping to avoid confusion with respect to Exchange Rules.

*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, allowing the Exchange to implement substantively identical rules across each of the BGM Affiliated Exchanges regarding the Plan does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, EDGX, BYX, and BZX rules of similar purpose. The proposed rule change should, therefore, resulting in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Members, which will further enhance competition.

[32] 15 U.S.C. 78k–1(a)(1).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and subparagraph (f)(6) of Rule 19b–4 thereunder.[34]

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–EDGA–2015–15 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–EDGA–2015–15. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2015–15, and should be submitted on or before May 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08339 Filed 4–10–15; 8:45 am]

**BILLING CODE 8011–01–P**

[33] 15 U.S.C. 78s(b)(3)(a)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 9091]**

### Certification Related to the Government of Haiti Under Section 7045(E)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015

Pursuant to the authority vested in the Secretary of State, including under section 7045(e)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235), I hereby certify that Haiti is taking steps to hold free and fair parliamentary elections and to seat a new Haitian Parliament; is selecting judges in a transparent manner and respecting the independence of the

judiciary; is combating corruption, including implementing the anti-corruption law by prosecuting corrupt officials; and is improving governance and implementing financial transparency and accountability requirements for government institutions.

This Certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

Dated: April 1, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015–08468 Filed 4–10–15; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice: 9092]**

### In the Matter of the Review of the Designation of Revolutionary Armed Forces of Colombia also known as FARC; also known as Fuerzas Armadas Revolucionarias de Colombia as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, as amended

Based upon a review of the Administrative Record assembled in these matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2008 decision to maintain the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: March 30, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015–08472 Filed 4–10–15; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 9093]**

### Notice of Meeting of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a meeting of the Department of State's International Telecommunication advisory Committee (ITAC) to review the activities of the Department of State in international meetings on international communications and information policy over the last quarter and prepare for similar activities in the next quarter. The ITAC will meet on April 28, 2015 at 2:00 p.m. EST at: 1120 20th Street NW., Conference RM 8–1 on 8th Floor, Washington, DC 20036 to review the preparations for and outcomes of international telecommunications meetings of the International Telecommunication Union (ITU), the Inter-American Telecommunications Commission, Organization for Economic Cooperation and Development, and Asia-Pacific Economic Cooperation Telecommunications, and announce preparations for similar activities. In particular, readout on the outcome of the ITU Conference Preparatory Meeting (CPM) for the 2015 World Radiocommunication Conference (WRC–15) as well as a request for input on future WRC–19 agenda items and possible U.S. nominations for ITU–R Study Group chairs at the Radiocommunication Assembly will be highlighted.

Attendance at this meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting at the invitation of the chair. Further details on this ITAC meeting will be announced on the Department of State's email list, *ITAC@lmlist.state.gov.* Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents. The Department welcomes any U.S. citizen or legal permanent resident to remain on or join the ITAC listserv by providing his or her name, email address, and the company, organization, or community that he or she is representing, if any. Persons wishing to request reasonable accommodation during the meeting should contact *jacksonln@state.gov* or *gadsdensf@state.gov* not later than April 15, 2015. Requests made after that time will be considered, but might not be able to be fulfilled.

**FOR FURTHER INFORMATION CONTACT:** Please contact Franz Zichy at 202–647–5778, *zichyfj@state.gov*.

Dated: April 4, 2015.

**Julie N. Zoller,**

*Senior Deputy Coordinator, International Communications and Information Policy, U.S. State Department.*

[FR Doc. 2015–08475 Filed 4–10–15; 8:45 am]

**BILLING CODE 4710–07–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Dispute No. WTO/DS488]**

### WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Oil Country Tubular Goods From Korea

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that the Republic of Korea has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement). That request may be found at *www.wto.org* contained in a document designated as WT/DS488/5. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 1, 2015, to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically to *www.regulations.gov*, docket number USTR–2015–0001. If you are unable to provide submissions by *www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** Matthew Jaffe, Assistant General Counsel, or Ross Bidlingmaier, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round

Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

**Major Issues Raised by Korea**

On July 18, 2014, the Department of Commerce (''Commerce'') published in the **Federal Register** notice of its final affirmative less-than-fair-value determination in the antidumping investigation concerning oil country tubular goods from Korea (79 FR 41983). On September 10, 2014, Commerce published the antidumping duty order (79 FR 53691).

In its request for the establishment of a panel, Korea challenges Commerce's calculation of the constructed value profit rate for the Korean respondents in the antidumping investigation of oil country tubular goods from Korea. Korea alleges inconsistencies with Articles 2.2, 2.2.2, and 2.4 of the Anti-Dumping Agreement. Korea also makes certain procedural claims with respect to Commerce's calculation of the constructed value profit rate, alleging inconsistencies with Articles 6.2, 6.4, 6.9, and 12.2.2 of the Anti-Dumping Agreement, and Articles I and X:3 of the General Agreement on Tariffs and Trade 1994.

Korea also challenges Commerce's use of downstream sale prices and costs based on an affiliated supplier's books and records for the Korean respondent NEXTEEL. Korea alleges inconsistencies with Articles 2.3 and 2.2.1.1 of the Anti-Dumping Agreement. In addition, Korea challenges Commerce's decision to select two mandatory respondents as inconsistent with Article 6.10, including Articles 6.10.1 and 6.10.2 of the Anti-Dumping Agreement.

Finally, Korea challenges ''as such'' Commerce's use of an alleged methodology to determine whether a respondent's third-country sales are viable for the purposes of calculating normal value. Korea also challenges Commerce's application of this alleged methodology in the determinations at issue in Korea's request for the establishment of a panel. Korea alleges inconsistencies with Article 2.2 of the Anti-Dumping Agreement.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2015–0001. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov*, enter docket number USTR–2015–0001 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comments'' field, or by attaching a document using an ''Upload File'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment that he/she submitted, be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2015–0001, accessible to the public at *www.regulations.gov*.

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at *www.ustr.gov*: The United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at *www.wto.org*. Comments open to public inspection may be viewed at *www.regulations.gov*.

**Juan Millan,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 2015–08326 Filed 4–10–15; 8:45 am]

**BILLING CODE 3290–F5–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Notice for Waiver for Aeronautical Land-Use Assurance at Will Rogers World Airport, Oklahoma City, OK

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

**ACTION:** Notice of Intent for Waiver of Aeronautical Land-Use.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the conversion of the airport property. The proposal consists of three parcels of land containing a total of approximately 240.80 acres located on the east side of the airport between South Portland Avenue and Interstate Highway 44.

The parcel 52 was originally acquired under the following grant: Airport Development Aid Program (ADAP) No. 6–40–0072–76 in 1975. The parcel 51 was originally acquired under the following grant: Airport Development Program (AIP) No. 3–40–0072–23 in 1992. The parcel 46 was acquired by Trust funds only. The land comprising these parcels is outside the forecasted need for aviation development and, thus, is no longer needed for indirect or direct aeronautical use. The Airport wished to develop this land for compatible commercial, non-aeronautical use. The income from the conversion of these parcels will benefit the aviation community by reinvestment in the airport.

Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion of the airport property will be in accordance with FAA's policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before May 13, 2015.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Glenn A. Boles, Manager, Federal Aviation Administration, Southwest Region, Airports Division, AR/OK Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, TX 76137.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Kranenburg, Director of Airports, The City of Oklahoma City, 7100 Terminal Drive, Oklahoma City, OK 73159, telephone (405) 316–3200; or Mr. Glenn A. Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office Manager, 2601 Meacham Boulevard, Fort Worth, TX 76137, telephone (817) 222–5630, FAX (817) 222–5987. Documents reflecting this FAA action may be reviewed at the above locations.

Issued in Fort Worth, TX, in March 20, 2015.

**Ignacio Flores,**

*Manager, Airports Division, Southwest Region.*

[FR Doc. 2015–08382 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0382]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 19 individuals for an exemption from the prohibition against 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) in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for up to 2 years in interstate commerce.

**DATES:** Comments must be received on or before May 13, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0382 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line 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 or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov,* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments 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 records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter to FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for up to a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes allow the Agency to renew exemptions

at the end of the 2-year period. The 19 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 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.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

**Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0382'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

**Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0382'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

**Summary of Applications**

*Daryl Charles Anderson*

Mr. Anderson is a 61 year-old class A CDL holder in Michigan. He has a history of a seizure disorder and has remained seizure free since 1989. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Anderson receiving an exemption.

*Cody Allen Baker*

Mr. Baker is a 24 year-old driver in Michigan. He has a history of a seizure disorder and has remained seizure free for more than four years. He takes anti-seizure medication with the dosage and frequency remaining the same since December 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Baker receiving an exemption.

*Ronald J. Bennett*

Mr. Bennett is a 58 year-old class B CDL holder in New York. He has a history of epilepsy and has remained seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Bennett receiving an exemption.

*Don Carrol Darbyshire*

Mr. Darbyshire is a 51 year-old class B CDL holder in Iowa. He has a history of epilepsy and has remained seizure free since 1993. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Darbyshire receiving an exemption.

*Monte James DeRocini*

Mr. DeRocini is a 53 year-old class A CDL holder in Pennsylvania. He has a history of a single seizure in 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. DeRocini receiving an exemption.

*Martin L. Ford*

Mr. Ford is a 57 year-old class C CDL holder in Mississippi. He has a history of seizures and has remained seizure free since 2003. He takes anti-seizure medication with the dosage and frequency remaining the same since 2008. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Ford receiving an exemption.

*Glen Michael Gervais*

Mr. Gervais is a 52 year-old driver in Florida. He has a history of a seizure disorder and has remained seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Gervais receiving an exemption.

*Roger Green*

Mr. Green is a 60 year-old class A CDL holder in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 1971. He takes anti-seizure medication with the

dosage and frequency remaining the same since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Green receiving an exemption.

*Susie B. Harvey*

Ms. Harvey is a 64 year-old class B CDL holder in Virginia. She has a history of epilepsy and has remained seizure free since 1985. She takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, she would like to drive a CMV. Her physician states that he is supportive of Ms. Harvey receiving an exemption.

*Timothy G. Huntley*

Mr. Huntley is a 40 year-old class B CDL holder in Maine. He has a history of a seizure disorder and has remained seizure free since 2000. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Huntley receiving an exemption.

*Robert Isaac Keen, Jr.*

Mr. Keen is a 66 year-old driver in Virginia. He has a history of a seizure disorder and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Keen receiving an exemption.

*Chance Joseph O'Mary*

Mr. O'Mary is a 29 year-old class A CDL holder in Alaska. He has a history of a seizure disorder and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. O'Mary receiving an exemption.

*Larry Todd Lintelman*

Mr. Lintelman is a 48 year-old class A CDL holder in Alaska. He has a history of seizures and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Lintelman receiving an exemption.

*Robert D. Richter, Sr.*

Mr. Richter is a 58 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 1976. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Richter receiving an exemption.

*Robert R. Rosebrough, Jr.*

Mr. Rosebrough is a 45 year-old class A CDL holder in Ohio. He has a history of epilepsy and has remained seizure free since May 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since November 2014. If granted the exemption, he would like to drive a CMV. His physician states that since it has only been nine months since his last event of loss of consciousness, Mr. Rosebrough may drive his personal vehicle until he has been seizure free for 8 years.

*Michael Scott Shumake*

Mr. Shumake is a 37 year-old driver in Virginia. He has a history of a seizure disorder and has remained seizure free since 2000. He takes anti-seizure medication with the dosage and frequency remaining the same since 2001. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Shumake receiving an exemption.

*Charles Ray Taylor*

Mr. Taylor is a 49 year-old class A CDL holder in Mississippi. He has a history of a single seizure in 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Taylor receiving an exemption.

*Karin Hawley Wagasy*

Ms. Wagasy is a 58 year-old driver in Tennessee. She has a history of a seizure disorder and has remained seizure free since 1975. She takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, she would like to drive a CMV. Her physician states that he is supportive of Ms. Wagasy receiving an exemption.

*Trever A. Williams*

Mr. Williams is a 44 year-old class A CDL holder in Minnesota. He has a history of a single seizure in 1983 which occurred postoperatively, after a surgical procedure to remove a foreign body from his head. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Williams receiving an exemption.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: April 7, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08392 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2014–0312]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA confirms its decision to exempt 69 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were effective on February 24, 2015. The exemptions expire on February 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@ dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**I. Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or

comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *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 January 23, 2014, FMCSA published a notice of receipt of Federal diabetes exemption applications from 69 individuals and requested comments from the public (80 FR 3724). The public comment period closed on February 23, 2015, and three comments were received.

FMCSA has evaluated the eligibility of the 69 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

*Diabetes Mellitus and Driving Experience of the Applicants*

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 69 applicants have had ITDM over a range of one to 29 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the January 23, 2014, **Federal Register** notice and they will not be repeated in this notice.

## III. Discussion of Comments

FMCSA received three comments in this proceeding. The comments are discussed below.

The American Trucking Associations, Inc. (ATA) submitted a comment stating, ''ATA believes that the increased volume of applications for exemption from parts of 49 CFR 391.41 is cause for concern. The granting of such a large number of exemptions dilutes the physical qualification standards and constitutes regulation through exemption. FMCSA must begin a dialogue on the need and effectiveness of these standards. If it is determined that these standards need to be altered, it must be done through the formal rulemaking process.'' FMCSA is engaged in a formal rulemaking process, and is preparing to publish an NPRM in the spring of this year.

Scott Cleveland submitted a comment stating the **Federal Register** notice did not tell him if he was approved. As stated in the notice, all drivers listed will receive an exemption effective the day after the close of the request for comments period, barring any negative comments.

An anonymous commenter submitted a comment stating that the **Federal Register** notice requesting comments does not state whether people are being granted an exemption because the comment period must end before the final determination is made.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

## V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## VI. Conclusion

Based upon its evaluation of the 69 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Bryan L. Anderson (WA), Travis K. Archer (ME), Michael R. Batham (CA), Victor M. Beltran-Araujo (ID), Charles A. Best (OH), Cassandra J. Braford (MN), Mark E. Buchholz (SD), Richard E. Buthy (NJ), George E. Carle (CO), Jamey S. Carney (IA), Bryan D. Carpenter (NC), Michael G. Cary (MN), John G. Castilaw (MS), Dominick Cicala (NJ), Scott E. Clevelan (KY), Adam C. Cochran (GA), Michael R. Cummings (VA), David L. Dalheim (NY), Brian Dick (MD), Timothy B. Duelke (ID), Cory A. Duncan (OR), Terrence J. Dunne (NJ), David L. Eklund (IL), Yoshitsugu Endo (NY), Barry K. Foster (TX), Robert Fugate (OH), John A. Georg (IA), Francis J. Gernatt, Jr. (NY), Mark A. Haines (WV), Ivan G. Hanford (OR), James L. Harman, III (VA), James R. Hoyle (TX), George E. Huften (CT), John M. Ippolito (NY), Allan L. Jameson (NE), Erik D. Kemmer (MN), Mark L. Knobel, Sr. (MD), Joseph E. Knox, Sr., Erik M. Lane (NY), Jacob C. Liebl (ND), Galen H. Martin (PA), James D. Martin (IN), John M. McCabe (IL), Kevin F. McGlade (PA), Brett J. Mellor (ID), Kenneth M. Merritt (CA), Douglas D. Milligan (WA), Charles E. Morgan (LA), Richard D. Neal (TN), Gary Anthony Alfred H. Nelson (FL), Robert E. Perdue (WA), Christie M. Rose (TX), John E. Sautkulis (NY), Kevin D. Schlichting (PA), Ronnie L. Schronce (NC), Richard A. Sharpe (MN), William F. Smith (DE), Richard W. Stultz (IN), Robin W. Swasey (UT), Michelle P. Thibeault (ME), Michael L. Thrasher (AL), Melinda K. Topel (MO), Steven R. Vance (TX), William D. VanReese (MN), Ellis J. Vest, Jr. (WV), Herbert E. Wachtel (MN), Kendall G. Webster (OR), Christopher J. Wilson (PA), Mark P. Zimmerman (NV).

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years 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 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. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 3, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08413 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2014–0014]**

### Pipeline Safety: Public Workshop on Pipeline Safety Management Systems

*Correction*

In notice document 2015–08115 appearing on pages 19113–19114 in the issue of April 9, 2015, make the following correction:

On page 19113, in the second column, under the DATES heading, in the third line, ''8:00 a.m. to 4:30 p.m. EST'' should read ''8:00 a.m. to 4:30 p.m. CST''.

[FR Doc. C1–2015–08115 Filed 4–9–15; 4:15 pm]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF TRANSPORTATION

### Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

**AGENCY:** ITS Joint Program Office, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

**ACTION:** Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC) will hold a teleconference on May 13, 2015, from 1:00 p.m. to 2:00 p.m. (EDT).

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-established under Section 53003 of Public Law 112–141, Moving Ahead for Progress in the 21st Century, July 6, 2012, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITSPAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

The following is a summary of the meeting tentative agenda: (1) Welcome, (2) Meeting Purpose, (3) Subcommittee Updates, (4) Review Action Items, (5) Summary and Adjourn.

The teleconference will be open to the public, but limited conference lines will be available on a first-come, first-served basis. Members of the public who wish to participate in the teleconference must submit a request to *ITSPAC@dot.gov,* not later than May 6, 2015. In addition, for planning purposes, your request must also indicate whether you wish to present oral statements during the teleconference.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE., HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS JPO requests that written comments be submitted not later than May 6, 2015.

Notice of this teleconference is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 8 day of April, 2015.

**Stephen Glasscock,**

*Designated Federal Official, ITS Joint Program Office.*

[FR Doc. 2015–08403 Filed 4–10–15; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket ID OCC–2015–0002]**

### Mutual Savings Association Advisory Committee

**AGENCY:** Office of the Comptroller of the Currency, Department of the Treasury.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

**DATES:** A public meeting of the MSAAC will be held on Tuesday, April 28, 2015, beginning at 8:00 a.m. Eastern Daylight Time (EDT). Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than Thursday, April 23, 2015. Members of the public who plan to attend the meeting, and

members of the public who may require auxiliary aids, should contact the OCC by 5:00 p.m. EDT on Thursday, April 23, 2015, to inform the OCC of their interest in attending the meeting and to provide the information that will be required to facilitate aid.

**ADDRESSES:** The OCC will hold the April 28, 2015 meeting of the MSAAC at the OCC's offices at 400 7th Street SW., Washington, DC 20219. Members of the public may submit written statements to *MSAAC@occ.treas.gov* or by mailing them to Donna Deale, Designated Federal Officer, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Donna Deale, Deputy Comptroller for Thrift Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** By this notice, the OCC is announcing that the MSAAC will convene a meeting on Tuesday, April 28, 2015, at the OCC's offices at 400 7th Street SW., Washington, DC 20219. The meeting is open to the public and will begin at 8:00 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on the regulatory changes or other steps the OCC may be able to take to ensure the continued health and viability of mutual savings associations and other issues of concern to existing mutual savings associations. The agenda includes a discussion of current topics of interest to the industry, including an update from OCC staff on current portfolio statistics, financial metrics and supervisory data on federal mutual savings associations.

Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Thursday, April 23, 2015, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government issued identification to enter the building. Members of the public who are deaf or hard of hearing should call (202) 649–5597 (TTY) by 5:00 p.m. EDT Thursday, April 23, 2015, to arrange auxiliary aids such as sign language interpretation for this meeting.

Dated: April 8, 2015.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2015–08404 Filed 4–10–15; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR) will be held on April 27, 2015, via teleconference. The meeting will last from 2:30 p.m. (EST) until 5:00 p.m. (EST). To join the meeting, dial 1–800–767–1750 with a participant code of 25743#.

The purpose of the Committee is to provide advice to the Secretary on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, Committee members will review recommendations and discuss best practices. The primary agenda topics will be to discuss future plans for VACOR.

No time will be allocated at this meeting for oral presentations from the public. However, the entirety of the meeting is open to the public. Interested parties should provide written comments for review by the Committee to Marisa Liuzzi, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW., Washington, DC 20420, or via email at *marisa.liuzzi@va.gov.* In the communication, writers must identify themselves and state the organization, association or person(s) they represent. Individuals who wish to call in to the meeting should RSVP to Marisa Liuzzi at (202) 461–9600, no later than close of business, April 20, 2015.

Dated: April 8, 2015.

**Rebecca Schiller,**

*Committee Management Officer.*

[FR Doc. 2015–08365 Filed 4–10–15; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Reimbursement for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** As required under the final regulation published elsewhere in this issue of the **Federal Register**, the Department of Veterans Affairs (VA) National Cemetery Administration (NCA) notifies interested parties of the maximum reimbursement amounts allowed for caskets and urns provided for interment in a VA national cemetery of the unclaimed remains of veterans with no known next-of-kin where sufficient financial resources are unavailable for the furnishing of a casket or urn for burial.

**DATES:** Maximum reimbursement rates in this notice are applicable for claims received in calendar year 2015 for burial receptacles purchased for interment of deceased eligible veterans in VA national cemeteries.

**FOR FURTHER INFORMATION CONTACT:** Tamula Jones, Budget Operations and Field Support Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: 202–461–6688 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 2306(f) of title 38, U.S.C., authorizes the Department of Veterans Affairs (VA) National Cemetery Administration (NCA) to furnish a casket or urn for interment in a VA national cemetery of the unclaimed remains of veterans for whom VA cannot identify a next of kin and determines that sufficient financial resources for the furnishing of a casket or urn for burial are not available. In another portion of this **Federal Register**, VA publishes the final rule for 38 CFR 38.628, implementing this authority by providing reimbursement for the purchase of a burial receptacle for an eligible veteran whose death occurs after January 10, 2014, subject to a maximum reimbursement limit, which is based on the average cost of a casket or urn meeting certain specifications available for purchase during the fiscal year preceding the calendar year of the date an application is received. This notice provides the maximum reimbursement rate for applications received in calendar year 2015.

Throughout 2014, VA advised individuals who intended to seek reimbursement for the purchase of caskets or urns to hold their receipts until the publication of the final rule. Because publication of the final rule was delayed, and these individuals could not submit those claims in calendar year 2014, VA has determined that the current maximum rates should apply.

We will continue to use the calculation for reimbursement rates as

determined by the average cost of caskets and urns that meet the minimum specifications provided in 38 CFR 38.628(c)(5). We will conduct market research of prices from multiple sources for procurement of durable plastic urns and metal caskets. Using this method of computation, the average cost was determined to be $1,938 for caskets and $169 for urns for fiscal year 2013. The allowance payable for calendar year 2014, would have been $1,938 for caskets and $169 for urns. VA has calculated the 2015 amounts by adjusting the 2014 rates for inflation. We state that the maximum reimbursement amounts for 2015 are $1,967 for a casket and $172 for an urn, which apply to all applications received in calendar year 2015.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on April 7, 2015, for publication.

Dated: April 8, 2015.

**William F. Russo,**

*Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.*

[FR Doc. 2015–08387 Filed 4–10–15; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 80 Monday,
No. 70 April 13, 2015

Part II

## Federal Communications Commission

47 CFR Parts 1, 8, and 20
Protecting and Promoting the Open Internet; Final Rule

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 1, 8, and 20**

**[GN Docket No. 14–28, FCC 15–24]**

## Protecting and Promoting the Open Internet

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) establishes rules to protect and promote the open Internet. Specifically, the *Open Internet Order* adopts bright-line rules that prohibit blocking, throttling, and paid prioritization; a rule preventing broadband providers from unreasonably interfering or disadvantaging consumers or edge providers from reaching one another on the Internet; and provides for enhanced transparency into network management practices, network performance, and commercial terms of broadband Internet access service. These rules apply to both fixed and mobile broadband Internet access services. The *Order* reclassifies broadband Internet access service as a telecommunications service subject to Title II of the Communications Act. Finally, the *Order* forbears from the majority of Title II provisions, leaving in place a framework that will support regulatory action while simultaneously encouraging broadband investment, innovation, and deployment.

**DATES:** This rule is effective June 12, 2015.

The modified information collection requirements in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181 of this document are not applicable until approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a separate document in the **Federal Register** announcing such approval and the relevant effective date(s).

**FOR FURTHER INFORMATION CONTACT:** Kristine Fargotstein, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2774 or by email at *Kristine.Fargotstein@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order on Remand, Declaratory Ruling, and Order (''*Open Internet Order*'' or ''*Order*'') in GN Docket No. 14–28, adopted on February 26, 2015 and released on March 12, 2015. The full text of this document can be viewed at the following Internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.docx*. The full text of this document is also available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (*e.g.* braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

### Synopsis

In the Report and Order on Remand, Declaratory Ruling, and Order, we establish rules to protect and promote the open Internet, reclassify broadband Internet access service as a telecommunications service subject to Title II of the Communications Act, and forbear from the majority of Title II provisions.

### I. Introduction

1. The open Internet drives the American economy and serves, every day, as a critical tool for America's citizens to conduct commerce, communicate, educate, entertain, and engage in the world around them. The benefits of an open Internet are undisputed. But it must remain open: Open for commerce, innovation, and speech; open for consumers and for the innovation created by applications developers and content companies; and open for expansion and investment by America's broadband providers. For over a decade, the Commission has been committed to protecting and promoting an open Internet.

2. Four years ago, the Commission adopted open Internet rules to protect and promote the ''virtuous cycle'' that drives innovation and investment on the Internet—both at the ''edges'' of the network, as well as in the network itself. In the years that those rules were in place, significant investment and groundbreaking innovation continued to define the broadband marketplace. For example, according to US Telecom, broadband providers invested $212 billion in the three years following adoption of the rules—from 2011 to 2013—more than in any three year period since 2002.

3. Likewise, innovation at the edge moves forward unabated. For example, 2010 was the first year that the majority of Netflix customers received their video content via online streaming rather than via DVDs in red envelopes. Today, Netflix sends the most peak downstream traffic in North America of any company. Other innovative service providers have experienced extraordinary growth—Etsy reports that it has grown from $314 million in merchandise sales in 2010 to $1.35 billion in merchandise sales in 2013. And, just as importantly, new kinds of innovative businesses are busy being born. In the video space alone, in just the last sixth months, CBS and HBO have announced new plans for streaming their content free of cable subscriptions; DISH has launched a new package of channels that includes ESPN, and Sony is not far behind; and Discovery Communications founder John Hendricks has announced a new over-the-top service providing bandwidth-intensive programming. This year, Amazon took home two Golden Globes for its new series ''Transparent.''

4. The lesson of this period, and the overwhelming consensus on the record, is that carefully-tailored rules to protect Internet openness will allow investment and innovation to continue to flourish. Consistent with that experience and the record built in this proceeding, today we adopt carefully-tailored rules that would prevent specific practices we know are harmful to Internet openness—blocking, throttling, and paid prioritization—as well as a strong standard of conduct designed to prevent the deployment of new practices that would harm Internet openness. We also enhance our transparency rule to ensure that consumers are fully informed as to whether the services they purchase are delivering what they expect.

5. Carefully-tailored rules need a strong legal foundation to survive and thrive. Today, we provide that foundation by grounding our open Internet rules in multiple sources of legal authority—including both section 706 of the Telecommunications Act and Title II of the Communications Act. Moreover, we concurrently exercise the Commission's forbearance authority to forbear from application of 27 provisions of Title II of the Communications Act, and over 700 Commission rules and regulations. This is a Title II tailored for the 21st century, and consistent with the ''light-touch'' regulatory framework that has facilitated the tremendous investment and innovation on the Internet. We expressly eschew the future use of prescriptive, industry-wide rate regulation. Under this approach, consumers can continue to enjoy unfettered access to the Internet over their fixed and mobile broadband connections, innovators can continue to

enjoy the benefits of a platform that affords them unprecedented access to hundreds of millions of consumers across the country and around the world, and network operators can continue to reap the benefits of their investments.

6. Informed by the views of nearly 4 million commenters, our staff-led roundtables, numerous *ex parte* presentations, meetings with individual Commissioners and staff, and more, our decision today—once and for all—puts into place strong, sustainable rules, grounded in multiple sources of our legal authority, to ensure that Americans reap the economic, social, and civic benefits of an open Internet today and into the future.

**II. Executive Summary**

7. The benefits of rules and policies protecting an open Internet date back over a decade and must continue. Just over a year ago, the D.C. Circuit in *Verizon* v. *FCC* struck down the Commission's 2010 conduct rules against blocking and unreasonable discrimination. But the *Verizon* court upheld the Commission's finding that Internet openness drives a ''virtuous cycle'' in which innovations at the edges of the network enhance consumer demand, leading to expanded investments in broadband infrastructure that, in turn, spark new innovations at the edge. The *Verizon* court further affirmed the Commission's conclusion that ''broadband providers represent a threat to Internet openness and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment.''

8. Threats to Internet openness remain today. The record reflects that broadband providers hold all the tools necessary to deceive consumers, degrade content, or disfavor the content that they don't like. The 2010 rules helped to deter such conduct while they were in effect. But, as Verizon frankly told the court at oral argument, but for the 2010 rules, it would be exploring agreements to charge certain content providers for priority service. Indeed, the wireless industry had a well-established record of trying to keep applications within a carrier-controlled ''walled garden'' in the early days of mobile applications. That specific practice ended when Internet Protocol (IP) created the opportunity to leap the wall. But the Commission has continued to hear concerns about other broadband provider practices involving blocking or degrading third-party applications.

9. Emerging Internet trends since 2010 give us more, not less, cause for concern about such threats. First, mobile broadband networks have massively expanded since 2010. They are faster, more broadly deployed, more widely used, and more technologically advanced. At the end of 2010, there were about 70,000 devices in the U.S. that had LTE wireless connections. Today, there are more than 127 million. We welcome this tremendous investment and innovation in the mobile marketplace. With carefully-tailored rules in place, that investment can continue to flourish and consumers can continue to enjoy unfettered access to the Internet over their mobile broadband connections. Indeed, mobile broadband is becoming an increasingly important pathway to the Internet independent of any fixed broadband connections consumers may have, given that mobile broadband is not a full substitute for fixed broadband connections. And consumers must be protected, for example from mobile commercial practices masquerading as ''reasonable network management.'' Second, and critically, the growth of online streaming video services has spurred further evolution of the Internet. Currently, video is the dominant form of traffic on the Internet. These video services directly confront the video businesses of the very companies that supply them broadband access to their customers.

10. The Commission, in its May *Notice of Proposed Rulemaking,* asked a fundamental question: ''What is the right public policy to ensure that the Internet remains open?'' It proposed to enhance the transparency rule, and follow the *Verizon* court's blueprint by relying on section 706 to adopt a no-blocking rule and a requirement that broadband providers engage in ''commercially reasonable'' practices. The Commission also asked about whether it should adopt other bright-line rules or different standards using other sources of Commission authority, including Title II. And if Title II were to apply, the Commission asked about how it should exercise its authority to forbear from Title II obligations. It asked whether mobile services should also be classified under Title II.

11. Three overarching objectives have guided us in answering these questions, based on the vast record before the Commission: America needs more broadband, better broadband, and open broadband networks. These goals are mutually reinforcing, not mutually exclusive. Without an open Internet, there would be less broadband investment and deployment. And, as discussed further below, all three are furthered through the open Internet rules and balanced regulatory framework we adopt today. (Consistent with the *Verizon* court's analysis, this Order need not conclude that any specific market power exists in the hands of one or more broadband providers in order to create and enforce these rules. Thus, these rules do not address, and are not designed to deal with, the acquisition or maintenance of market power or its abuse, real or potential. Moreover, it is worth noting that the Commission acts in a manner that is both complementary to the work of the antitrust agencies and supported by their application of antitrust laws. *See generally* 47 U.S.C. 152(b) (''[N]othing in this Act . . . shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.''). Nothing in this Order in any way precludes the Antitrust Division of the Department of Justice or the Commission itself from fulfilling their respective responsibilities under section 7 of the Clayton Act (15 U.S.C. 18), or the Commission's public interest standard as it assesses prospective transactions.)

12. In enacting the Administrative Procedure Act (APA), Congress instructed expert agencies conducting rulemaking proceedings to ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.'' It is public comment that cements an agency's expertise. As was explained in the seminal report that led to the enactment of the APA:

> The reason for [an administrative agency's] existence is that it is expected to bring to its task greater familiarity with the subject than legislators, dealing with many subjects, can have. But its knowledge is rarely complete, and it must always learn the frequently clashing viewpoints of those whom its regulations will affect.

13. Congress could not have imagined when it enacted the APA almost seventy years ago that the day would come when nearly 4 million Americans would exercise their right to comment on a proposed rulemaking. But that is what has happened in this proceeding and it is a good thing. The Commission has listened and it has learned. Its expertise has been strengthened. Public input has ''improve[d] the quality of agency rulemaking by ensuring that agency regulations will be 'tested by exposure to diverse public comment.'" There is general consensus in the record on the need for the Commission to provide certainty with clear, enforceable rules. There is also general consensus on the need to have such rules. Today the Commission, informed by all of those views, makes a decision grounded in the record. The Commission has considered

the arguments, data, and input provided by the commenters, even if not in agreement with the particulars of this Order; that public input has created a robust record, enabling the Commission to adopt new rules that are clear and sustainable.

*A. Strong Rules That Protect Consumers From Past and Future Tactics That Threaten the Open Internet*

1. Clear, Bright-Line Rules

14. Because the record overwhelmingly supports adopting rules and demonstrates that three specific practices invariably harm the open Internet—Blocking, Throttling, and Paid Prioritization—this Order bans each of them, applying the same rules to both fixed and mobile broadband Internet access service.

15. *No Blocking.* Consumers who subscribe to a retail broadband Internet access service must get what they have paid for—access to all (lawful) destinations on the Internet. This essential and well-accepted principle has long been a tenet of Commission policy, stretching back to its landmark decision in *Carterfone,* which protected a customer's right to connect a telephone to the monopoly telephone network. Thus, this Order adopts a straightforward ban:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.*

16. *No Throttling.* The 2010 open Internet rule against blocking contained an ancillary prohibition against the degradation of lawful content, applications, services, and devices, on the ground that such degradation would be tantamount to blocking. This Order creates a separate rule to guard against degradation targeted at specific uses of a customer's broadband connection:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management.*

17. The ban on throttling is necessary both to fulfill the reasonable expectations of a customer who signs up for a broadband service that promises access to all of the lawful Internet, and to avoid gamesmanship designed to avoid the no-blocking rule by, for example, rendering an application effectively, but not technically, unusable. It prohibits the degrading of Internet traffic based on source, destination, or content. (To be clear, the protections of the no-blocking and no-throttling rules apply to particular classes of applications, content and services as well as particular applications, content, and services.) It also specifically prohibits conduct that singles out content competing with a broadband provider's business model.

18. *No Paid Prioritization.* Paid prioritization occurs when a broadband provider accepts payment (monetary or otherwise) to manage its network in a way that benefits particular content, applications, services, or devices. To protect against ''fast lanes,'' this Order adopts a rule that establishes that:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization. ''Paid prioritization'' refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity.* (Unlike the no-blocking and no-throttling rules, there is no ''reasonable network management'' exception to the paid prioritization rule because paid prioritization is inherently a business practice rather than a network management practice.)

19. The record demonstrates the need for strong action. The *Verizon* court itself noted that broadband networks have ''powerful incentives to accept fees from edge providers, either in return for excluding their competitors or for granting them prioritized access to end users.'' Mozilla, among many such commenters, explained that ''[p]rioritization . . . inherently creates fast and slow lanes.'' Although there are arguments that some forms of paid prioritization could be beneficial, the practical difficulty is this: The threat of harm is overwhelming, case-by-case enforcement can be cumbersome for individual consumers or edge providers, and there is no practical means to measure the extent to which edge innovation and investment would be chilled. And, given the dangers, there is no room for a blanket exception for instances where consumer permission is buried in a service plan—the threats of consumer deception and confusion are simply too great.

2. No Unreasonable Interference or Unreasonable Disadvantage to Consumers or Edge Providers

20. The key insight of the virtuous cycle is that broadband providers have both the incentive and the ability to act as gatekeepers standing between edge providers and consumers. As gatekeepers, they can block access altogether; they can target competitors, including competitors to their own video services; and they can extract unfair tolls. Such conduct would, as the Commission concluded in 2010, ''reduce the rate of innovation at the edge and, in turn, the likely rate of improvements to network infrastructure.'' In other words, when a broadband provider acts as a gatekeeper, it actually chokes consumer demand for the very broadband product it can supply.

21. The bright-line bans on blocking, throttling, and paid prioritization will go a long way to preserve the virtuous cycle. But not all the way. Gatekeeper power can be exercised through a variety of technical and economic means, and without a catch-all standard, it would be that, as Benjamin Franklin said, ''a little neglect may breed great mischief.'' Thus, the Order adopts the following standard:

*Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage (i) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.*

22. This ''no unreasonable interference/disadvantage'' standard protects free expression, thus fulfilling the congressional policy that ''the Internet offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.'' And the standard will permit considerations of asserted benefits of innovation as well as threatened harm to end users and edge providers.

3. Enhanced Transparency

23. The Commission's 2010 transparency rule, upheld by the *Verizon* court, remains in full effect:

*A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.*

24. Today's Order reaffirms the importance of ensuring transparency, so that consumers are fully informed about

the Internet access they are purchasing and so that edge providers have the information they need to understand whether their services will work as advertised. To do that, the Order builds on the strong foundation established in 2010 and enhances the transparency rule for both end users and edge providers, including by adopting a requirement that broadband providers always must disclose promotional rates, all fees and/or surcharges, and all data caps or data allowances; adding packet loss as a measure of network performance that must be disclosed; and requiring specific notification to consumers that a ''network practice'' is likely to significantly affect their use of the service. Out of an abundance of caution and in response to a request by the American Cable Association, we also adopt a temporary exemption from these enhancements for small providers (defined for the purposes of the temporary exception as providers with 100,000 or fewer subscribers), and we direct our Consumer & Governmental Affairs Bureau to adopt an Order by December 15, 2015 concerning whether to make the exception permanent and, if so, the appropriate definition of ''small.'' Lastly, we create for all providers a ''safe harbor'' process for the format and nature of the required disclosure to consumers, which we believe will result in more effective presentation of consumer-focused information by broadband providers.

4. Scope of the Rules

25. The open Internet rules described above apply to both fixed and mobile broadband Internet access service. Consistent with the *2010 Order,* today's Order applies its rules to the consumer-facing service that broadband networks provide, which is known as ''broadband Internet access service'' (BIAS) (We note that our use of the term ''broadband'' in this Order includes but is not limited to services meeting the threshold for ''advanced telecommunications capability,'' as defined in section 706 of the Telecommunications Act of 1996, as amended. 47 U.S.C. 1302(b). Section 706 defines that term as ''high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.'' 47 U.S.C. 1302(d)(1). The *2015 Broadband Progress Report* specifically notes that ''advanced telecommunications capability,'' while sometimes referred to as ''broadband,'' differs from the Commission's use of the term ''broadband'' in other contexts. *2015 Broadband Progress Report* at n.1 (rel. Feb. 4, 2015)) and is defined to be:

*A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this Part.*

26. As in 2010, BIAS does not include enterprise services, virtual private network services, hosting, or data storage services. Further, we decline to apply the open Internet rules to premises operators to the extent they may be offering broadband Internet access service as we define it today.

27. In defining this service we make clear that we are responding to the *Verizon* court's conclusion that broadband providers ''furnish a service to edge providers'' (and that this service was being treated as common carriage *per se*). As discussed further below, we make clear that broadband Internet access service encompasses this service to edge providers. Broadband providers sell retail customers the ability to go anywhere (lawful) on the Internet. Their representation that they will transport and deliver traffic to and from all or substantially all Internet endpoints includes the promise to transmit traffic to and from those Internet endpoints back to the user.

28. *Interconnection.* BIAS involves the exchange of traffic between a broadband Internet access provider and connecting networks. The representation to retail customers that they will be able to reach ''all or substantially all Internet endpoints'' necessarily includes the promise to make the interconnection arrangements necessary to allow that access.

29. As discussed below, we find that broadband Internet access service is a ''telecommunications service'' and subject to sections 201, 202, and 208 (along with key enforcement provisions). As a result, commercial arrangements for the exchange of traffic with a broadband Internet access provider are within the scope of Title II, and the Commission will be available to hear disputes raised under sections 201 and 202 on a case-by-case basis: An appropriate vehicle for enforcement where disputes are primarily over commercial terms and that involve some very large corporations, including companies like transit providers and Content Delivery Networks (CDNs), that act on behalf of smaller edge providers.

30. But this Order does not apply the open Internet rules to interconnection. Three factors are critical in informing this approach to interconnection. First, the nature of Internet traffic, driven by massive consumption of video, has challenged traditional arrangements—placing more emphasis on the use of CDNs or even direct connections between content providers (like Netflix or Google) and last-mile broadband providers. Second, it is clear that consumers have been subject to degradation resulting from commercial disagreements, perhaps most notably in a series of disputes between Netflix and large last-mile broadband providers. But, third, the causes of past disruption and—just as importantly—the potential for future degradation through interconnection disputes—are reflected in very different narratives in the record.

31. While we have more than a decade's worth of experience with last-mile practices, we lack a similar depth of background in the Internet traffic exchange context. Thus, we find that the best approach is to watch, learn, and act as required, but not intervene now, especially not with prescriptive rules. This Order—for the first time—provides authority to consider claims involving interconnection, a process that is sure to bring greater understanding to the Commission.

32. *Reasonable Network Management.* As with the 2010 rules, this Order contains an exception for reasonable network management, which applies to all but the paid prioritization rule (which, by definition, is not a means of managing a network):

*A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.*

33. Recently, significant concern has arisen when mobile providers' have attempted to justify certain practices as reasonable network management practices, such as applying speed reductions to customers using ''unlimited data plans'' in ways that effectively force them to switch to price plans with less generous data allowances. For example, in the summer of 2014, Verizon announced a change to its ''unlimited'' data plan for LTE customers, which would have limited the speeds of LTE customers using

grandfathered ''unlimited'' plans once they reached a certain level of usage each month. Verizon briefly described this change as within the scope of ''reasonable network management,'' before changing course and withdrawing the change.

34. With mobile broadband service now subject to the same rules as fixed broadband service, the Order expressly recognizes that evaluation of network management practices will take into account the additional challenges involved in the management of mobile networks, including the dynamic conditions under which they operate. It also recognizes the specific network management needs of other technologies, such as unlicensed Wi-Fi networks.

35. *Non-Broadband Internet Access Service Data Services.* The 2010 rules included an exception for ''specialized services.'' This Order likewise recognizes that some data services—like facilities-based VoIP offerings, heart monitors, or energy consumption sensors—may be offered by a broadband provider but do not provide access to the Internet generally. The term ''specialized services'' can be confusing because the critical point is not whether the services are ''specialized;'' it is that they are not broadband Internet access service. IP-services that do not travel over broadband Internet access service, like the facilities-based VoIP services used by many cable customers, are not within the scope of the open Internet rules, which protect access or use of broadband Internet access service. Nonetheless, these other non-broadband Internet access service data services could be provided in a manner that undermines the purpose of the open Internet rules and that will not be permitted. The Commission expressly reserves the authority to take action if a service is, in fact, providing the functional equivalent of broadband Internet access service or is being used to evade the open Internet rules. The Commission will vigilantly watch for such abuse, and its actions will be aided by the existing transparency requirement that non-broadband Internet access service data services be disclosed.

5. Enforcement

36. The Commission may enforce the open Internet rules through investigation and the processing of complaints (both formal and informal). In addition, the Commission may provide guidance through the use of enforcement advisories and advisory opinions, and it will appoint an ombudsperson. In order to provide the Commission with additional understanding, particularly of technical issues, the Order delegates to the Enforcement Bureau the authority to request a written opinion from an outside technical organization or otherwise to obtain objective advice from industry standard-setting bodies or similar organizations.

*B. Promoting Investment With a Modern Title II*

37. Today, our forbearance approach results in over 700 codified rules being inapplicable, a ''light-touch'' approach for the use of Title II. This includes no unbundling of last-mile facilities, no tariffing, no rate regulation, and no cost accounting rules, which results in a carefully tailored application of only those Title II provisions found to directly further the public interest in an open Internet and more, better, and open broadband. Nor will our actions result in the imposition of any new federal taxes or fees; the ability of states to impose fees on broadband is already limited by the congressional Internet tax moratorium.

38. This is Title II tailored for the 21st Century. Unlike the application of Title II to incumbent wireline companies in the 20th Century, a swath of utility-style provisions (including tariffing) will *not* be applied. Indeed, there will be fewer sections of Title II applied than have been applied to Commercial Mobile Radio Service (CMRS), where Congress expressly required the application of sections 201, 202, and 208, and permitted the Commission to forbear from others. In fact, Title II has never been applied in such a focused way.

39. History demonstrates that this careful approach to the use of Title II will not impede investment. First, mobile voice services have been regulated under a similar light-touch Title II approach since 1994—and investment and usage boomed. For example, between 1993 and 2009 (while voice was the primary driver of mobile revenues), the mobile industry invested more than $271 billion in building out networks, during a time in which industry revenues increased by 1300 percent and subscribership grew over 1600 percent. Moreover, more recently, Verizon Wireless has invested tens of billions of dollars in deploying mobile wireless services since being subject to the 700 MHz C Block open access rules, which overlap in significant parts with the open Internet rules we adopt today. But that is not all. Today, key provisions of Title II apply to certain enterprise broadband services that AT&T has described as ''the epicenter of the broadband investment'' the Commission seeks to promote. Title II has been maintained by more than 1000 rural local exchange carriers that have chosen to offer their DSL and fiber broadband services as common carrier offerings. And, of course, wireline DSL was regulated as a common-carrier service until 2005—including a period in the late '90s and the first five years of this century that saw the highest levels of wireline broadband infrastructure investment to date.

40. In any event, recent events have demonstrated that our rules will not disrupt capital markets or investment. Following recent discussions of the potential application of Title II to consumer broadband, investment analysts have issued reports concluding that Title II with appropriate forbearance is unlikely to alter broadband provider conduct or have any negative effect on their value or future profitability. Executives from large broadband providers have also repeatedly represented to investors that the prospect of regulatory action will not influence their investment strategies or long-term profitability; indeed, Sprint has gone so far to say that it ''does not believe that a light touch application of Title II, including appropriate forbearance, would harm the continued investment in, and deployment of, mobile broadband services.'' Finally, the recent AWS auction, conducted under the prospect of Title II regulation, generated bids (net of bidding credits) of more than $41 billion—further demonstrating that robust investment is not inconsistent with a light-touch Title II regime.

*C. Sustainable Open Internet Rules*

41. We ground our open Internet rules in multiple sources of legal authority—including both section 706 and Title II of the Communications Act. The *Verizon* court upheld the Commission's use of section 706 as a substantive source of legal authority to adopt open Internet protections. But it held that, ''[g]iven the Commission's still-binding decision to classify broadband providers . . . as providers of 'information services,' '' open Internet protections that regulated broadband providers as common carriers would violate the Act. Rejecting the Commission's argument that broadband providers only served retail consumers, the *Verizon* court went on to explain that ''broadband providers furnish a service to edge providers, thus undoubtedly functioning as edge providers' 'carriers,' '' and held that the 2010 no blocking and no unreasonable discrimination rules impermissibly

''obligated [broadband providers] to act as common carriers.''

42. The *Verizon* decision thus made clear that section 706 affords the Commission substantive authority, and that open Internet protections are within the scope of that authority. And this Order relies on section 706 for the open Internet rules. But, in light of *Verizon,* absent a classification of broadband providers as providing a ''telecommunications service,'' the Commission could only rely on section 706 to put in place open Internet protections that steered clear of regulating broadband providers as common carriers *per se.* Thus, in order to bring a decade of debate to a certain conclusion, we conclude that the best path is to rely on all available sources of legal authority—while applying them with a light touch consistent with further investment and broadband deployment. Taking the *Verizon* decision's implicit invitation, we revisit the Commission's classification of the retail broadband Internet access service as an information service and clarify that this service encompasses the so-called ''edge service.''

43. Exercising our delegated authority to interpret ambiguous terms in the Communications Act, as confirmed by the Supreme Court in *Brand X,* today's Order concludes that the facts in the market today are very different from the facts that supported the Commission's 2002 decision to treat cable broadband as an information service and its subsequent application to fixed and mobile broadband services. Those prior decisions were based largely on a factual record compiled over a decade ago, during an earlier time when, for example, many consumers would use homepages supplied by their broadband provider. In fact, the *Brand X* Court explicitly acknowledged that the Commission had previously classified the transmission service, which broadband providers offer, as a telecommunications service and that the Commission could return to that classification if it provided an adequate justification. Moreover, a number of parties who, in this proceeding, now oppose our reclassification of broadband Internet access service, previously argued that cable broadband should be deemed a telecommunications service. As the record reflects, times and usage patterns have changed and it is clear that broadband providers are offering both consumers and edge providers straightforward transmission capabilities that the Communications Act defines as a ''telecommunications service.''

44. The *Brand X* decision made famous the metaphor of pizza delivery. Justice Scalia, in dissent, concluded that the Commission had exceeded its legal authority by classifying cable-modem service as an ''information service.'' To make his point, Justice Scalia described a pizzeria offering delivery services as well as selling pizzas and concluded that, similarly—broadband providers were offering ''telecommunications services'' even if that service was not offered on a ''stand-alone basis.''

45. To take Justice Scalia's metaphor a step further, suppose that in 2014, the pizzeria owners discovered that other nearby restaurants did not deliver their food and thus concluded that the pizza-delivery drivers could generate more revenue by delivering from any neighborhood restaurant (including their own pizza some of the time). Consumers would clearly understand that they are being offered a delivery service.

46. Today, broadband providers are offering stand-alone transmission capacity and that conclusion is not changed even if, as Justice Scalia recognized, other products may be offered at the same time. The trajectory of technology in the decade since the *Brand X* decision has been towards greater and greater modularity. For example, consumers have considerable power to combine their mobile broadband connections with the device, operating systems, applications, Internet services, and content of their choice. Today, broadband Internet access service is fundamentally understood by customers as a transmission platform through which consumers can access third-party content, applications, and services of their choosing.

47. Based on this updated record, this Order concludes that the retail broadband Internet access service available today is best viewed as separately identifiable offers of (1) a broadband Internet access service that is a telecommunications service (including assorted functions and capabilities used for the management and control of that telecommunication service) and (2) various ''add-on'' applications, content, and services that generally are information services. This finding more than reasonably interprets the ambiguous terms in the Communications Act, best reflects the factual record in this proceeding, and will most effectively permit the implementation of sound policy consistent with statutory objectives, including the adoption of effective open Internet protections.

48. This Order also revisits the Commission's prior classification of mobile broadband Internet access service as a private mobile service, which cannot be subject to common carrier regulation, and finds that it is best viewed as a commercial mobile service or, in the alternative, the functional equivalent of commercial mobile service. Under the statutory definition, commercial mobile services must be ''interconnected with the public switched network (as such terms are defined by regulation by the Commission).'' Consistent with that delegation of authority to define these terms, and with the Commission's previous recognition that the public switched network will grow and change over time, this Order updates the definition of public switched network to reflect current technology, by including services that use public IP addresses. Under this revised definition, the Order concludes that mobile broadband Internet access service is interconnected with the public switched network. In the alternative, the Order concludes that mobile broadband Internet access service is the functional equivalent of commercial mobile service because, like commercial mobile service, it is a widely available, for profit mobile service that offers mobile subscribers the capability to send and receive communications, including voice, on their mobile device.

49. By classifying broadband Internet access service under Title II of the Act, in our view the Commission addresses any limitations that past classification decisions placed on the ability to adopt strong open Internet rules, as interpreted by the D.C. Circuit in the *Verizon* case.

50. Having classified broadband Internet access service as a telecommunications service, we respond to the *Verizon* court's holding, supporting our open Internet rules under the Commission's Title II authority and removing any common carriage limitation on the exercise of our section 706 authority. For mobile broadband services, we also ground the open Internet rules in our Title III authority to protect the public interest through the management of spectrum licensing.

*D. Broad Forbearance*

51. In finding that broadband Internet access service is subject to Title II, we simultaneously exercise the Commission's forbearance authority to forbear from 30 statutory provisions and render over 700 codified rules inapplicable, to establish a light-touch regulatory framework tailored to preserving those provisions that advance our goals of more, better, and

open broadband. We thus forbear from the vast majority of rules adopted under Title II. We do not, however, forbear from sections 201, 202, and 208 (or from related enforcement provisions), (Specifically, we do not forbear from the enforcement authorities set forth in sections 206, 207, 208, 209, 216, and 217. To preserve existing CALEA obligations that already apply to broadband Internet access service, we also decline to forbear from section 229.) which are necessary to support adoption of our open Internet rules. We also grant extensive forbearance, minimizing the burdens on broadband providers while still adequately protecting the public.

52. In addition, we do not forbear from a limited number of sections necessary to ensure consumers are protected, promote competition, and advance universal access, all of which will foster network investment, thereby helping to promote broadband deployment.

53. *Section 222: Protecting Consumer Privacy.* Ensuring the privacy of customer information both directly protects consumers from harm and eliminates consumer concerns about using the Internet that could deter broadband deployment. Among other things, section 222 imposes a duty on every telecommunications carrier to take reasonable precautions to protect the confidentiality of its customers' proprietary information. We take this mandate seriously. For example, the Commission recently took enforcement action under section 222 (and section 201(b)) against two telecommunications companies that stored customers' personal information, including social security numbers, on unprotected, unencrypted Internet servers publicly accessible using a basic Internet search. This unacceptably exposed these consumers to the risk of identity theft and other harms.

54. As the Commission has recognized, ''[c]onsumers' privacy needs are no less important when consumers communicate over and use broadband Internet access than when they rely on [telephone] services.'' Thus, this Order finds that consumers concerned about the privacy of their personal information will be more reluctant to use the Internet, stifling Internet service competition and growth. Application of section 222's protections will help spur consumer demand for those Internet access services, in turn ''driving demand for broadband connections, and consequently encouraging more broadband investment and deployment,'' consistent with the goals of the 1996 Act.

55. *Sections 225/255/251(a)(2): Ensuring Disabilities Access.* We do not forbear from those provisions of Title II that ensure access to broadband Internet access service by individuals with disabilities. All Americans, including those with disabilities, must be able to reap the benefits of an open Internet, and ensuring access for these individuals will further the virtuous cycle of consumer demand, innovation, and deployment. This Order thus concludes that application of sections 225, 255, and 251(a)(2) is necessary to protect consumers and furthers the public interest, as explained in greater detail below.

56. *Section 224: Ensuring Infrastructure Access.* For broadband Internet access service, we do not forbear from section 224 and the Commission's associated procedural rules (to the extent they apply to telecommunications carriers and services and are, thus, within the Commission's forbearance authority). Section 224 of the Act governs the Commission's regulation of pole attachments. In particular, section 224(f)(1) requires utilities to provide cable system operators and telecommunications carriers the right of ''nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled'' by a utility. Access to poles and other infrastructure is crucial to the efficient deployment of communications networks including, and perhaps especially, new entrants.

57. *Section 254: Promoting Universal Broadband.* Section 254 promotes the deployment and availability of communications networks to all Americans, including rural and low-income Americans—furthering our goals of more and better broadband. With the exception of section 254(d), (g), and (k) as discussed below, we therefore do not find the statutory test for forbearance from section 254 (and the related provision in section 214(e)) is met. We recognize that supporting broadband-capable networks is already a key component of Commission's current universal service policies. The Order concludes, however, that directly applying section 254 provides both more legal certainty for the Commission's prior decisions to offer universal service subsidies for deployment of broadband networks and adoption of broadband services and more flexibility going forward.

58. We partially forbear from section 254(d) and associated rules insofar as they would immediately require mandatory universal service contributions associated with broadband Internet access service.

59. Below, we first adopt three bright-line rules banning blocking, throttling, and paid prioritization, and make clear the no-unreasonable interference/disadvantage standard by which the Commission will evaluate other practices, according to their facts. These rules are grounded in multiple sources of statutory authority, including section 706 and Titles II and III of the Communications Act. Second, based on a current factual record, we reclassify broadband Internet access service as a telecommunications service under Title II. And, third, guided by our goals of more, better, and open broadband, we exercise our forbearance authority to put in place a ''light touch'' Title II regulatory framework that protects consumers and innovators, without deterring investment.

## III. Report and Order on Remand: Protecting and Promoting the Open Internet

### *A. History of Openness Regulation*

60. These rules are the latest in a long line of actions by the Commission to ensure that American communications networks develop in ways that foster economic competition, technological innovation, and free expression. Ever since the landmark 1968 *Carterfone* decision, the Commission has recognized that communications networks are most vibrant, and best able to serve the public interest, when consumers are empowered to make their own decisions about how networks are to be accessed and utilized. Openness regulation aimed at safeguarding consumer choice has therefore been a hallmark of Commission policy for over forty years.

61. In *Carterfone,* the Commission confronted AT&T's practice of preventing consumers from attaching any equipment not supplied by AT&T to their home telephones, even if the attachment did not put the underlying network at risk. Finding AT&T's ''foreign attachment'' provisions unreasonable and unlawful, the Commission ruled that AT&T customers had the right to connect useful devices of their choosing to their home telephones, provided these devices did not adversely affect the telephone network.

62. *Carterfone* and subsequent regulatory actions by the Commission severed the market for customer premises equipment (CPE) from that for telephone service. In doing so, the Commission allowed new participants and new ideas into the market, setting the stage for a wave of innovation that produced technologies such as the

answering machine, fax machine, and modem—thereby removing a barrier to the development of the packet switched network that would eventually become the Internet.

63. Commitment to robust competition and open networks defined Commission policy at the outset of the digital revolution as well. In a series of influential decisions, known collectively as the *Computer Inquiries,* the Commission established a flexible regulatory framework to support development of the nascent information economy. The *Computer Inquiries* decisions separated the market for information services from the underlying network infrastructure, and imposed firm non-discrimination rules for network access. This system prevented network owners from engaging in anti-competitive behavior and spurred the development and adoption of new technologies.

64. The principles of open access, competition, and consumer choice embodied in *Carterfone* and the *Computer Inquires* have continued to guide Commission policy in the Internet era. As former Chairman Michael Powell noted in 2004, ''ensuring that consumers can obtain and use the content, applications and devices they want . . . is critical to unlocking the vast potential of the broadband Internet.'' In recognition of this fact, in 2005, the Commission unanimously approved the *Internet Policy Statement,* which laid out four guiding principles designed to encourage broadband deployment and ''preserve and promote the open and interconnected nature of the Internet.'' These principles sought to ensure that consumers had the right to access and use the lawful content, applications, and devices of their choice online, and to do so in an Internet ecosystem defined by competitive markets.

65. From 2005 to 2011, the principles embodied in the *Internet Policy Statement* were incorporated as conditions by the Commission into several merger orders and a key 700 MHz license, including the SBC/AT&T, Verizon/MCI, and Comcast/NBCU mergers and the Upper 700 MHz C block open platform requirements. Commission approval of these transactions was expressly conditioned on compliance with the *Internet Policy Statement.* During this time, open Internet principles were also applied to particular enforcement proceedings aimed at addressing anti-competitive behavior by service providers.

66. In June 2010, following a D.C. Circuit decision invalidating the Commission's exercise of ancillary authority to provide consumers basic protections in using broadband Internet services, the Commission initiated a *Notice of Inquiry* to ''seek comment on our legal framework for broadband Internet service.'' The *Notice of Inquiry* recognized that ''the current legal classification of broadband Internet service is based on a record that was gathered a decade ago.'' It sought comment on three separate alternative legal frameworks for classifying and regulating broadband Internet service: (1) As an information service, (2) as a telecommunications service ''to which all the requirements of Title II of the Communications Act would apply,'' and (3) solely as to the ''Internet connectivity service,'' as a telecommunications service with forbearance from most Title II obligations. The *Notice of Inquiry* sought comment on both wired and wireless broadband Internet services, ''as well as on other factual and legal issues specific to . . . wireless services that bear on their appropriate classification.''

67. In December 2010, the Commission adopted the *Open Internet Order (76 FR 59192–01, Sept. 23, 2011),* a codification of the policy principles contained in the *Internet Policy Statement.* The *Open Internet Order* was based on broadly accepted Internet norms and the Commission's long regulatory experience in preserving open and dynamic communications networks. The *Order* adopted three fundamental rules governing Internet service providers: (1) No blocking; (2) no unreasonable discrimination; and (3) transparency. The no-blocking rule and no-unreasonable discrimination rules prevented broadband service providers from deliberately interfering with consumers' access to lawful content, applications, and services, while the transparency rule promoted informed consumer choice by requiring disclosure by service providers of critical information relating to network management practices, performance, and terms of service.

68. The antidiscrimination rule contained in the *Open Internet Order* operated on a case-by-case basis, with the Commission evaluating the conduct of fixed broadband service providers based on a number of factors, including conformity with industry best practices, harm to competing services or end users, and impairment of free expression. This no unreasonable discrimination framework applied to commercial agreements between fixed broadband service providers and third parties to prioritize transmission of certain traffic to their subscribers. The *Open Internet Order* also specifically addressed paid prioritization arrangements. It did not entirely rule out the possibility of such agreements, but made clear that such ''pay for priority'' deals and the associated ''paid prioritization'' network practices were likely to be problematic in a number of respects. Paid prioritization ''represented a significant departure from historical and current practice'' that threatened ''great harm to innovation'' online, particularly in connection with the market for new services by edge providers. Paid priority agreements were also viewed as a threat to non-commercial end users, ''including individual bloggers, libraries, schools, advocacy organizations, and other speakers'' who would be less able to pay for priority service. Finally, paid prioritization was seen giving fixed broadband providers ''an incentive to limit the quality of service provided to non-prioritized traffic.'' As a result of these concerns, the Commission explicitly stated in the *Open Internet Order* that it was ''unlikely that pay for priority would satisfy the 'no unreasonable discrimination' standard.''

69. In order to maintain flexibility, the Commission tailored the rules contained in the *Open Internet Order* to fit the technical and economic realities of the broadband ecosystem. To this end, the restrictions on blocking and discrimination were made subject to an exception for ''reasonable network management,'' allowing service providers the freedom to address legitimate needs such as avoiding network congestion and combating harmful or illegal content. Additionally, in order to account for then-perceived differences between the fixed and mobile broadband markets, the *Open Internet Order* exempted mobile service providers from the anti-discrimination rule, and only barred mobile providers from blocking ''consumers from accessing lawful Web sites'' or ''applications that compete with the provider's voice or video telephony services.'' Lastly, the *Open Internet Order* made clear that the rules did not prohibit broadband providers from offering specialized services such as VoIP; instead, the Commission announced that it would continue to monitor such arrangements to ensure that they did not pose a threat to Internet openness.

70. Verizon subsequently challenged the *Open Internet Order* in the U.S. Court of Appeals for the D.C. Circuit, arguing, among other things, that the *Open Internet Order* exceeded the Commission's regulatory authority and violated the Act. In January 2014, the

D.C. Circuit upheld the Commission's determination that section 706 of the Telecommunications Act of 1996 granted the Commission authority to regulate broadband Internet service providers, and that the Commission had demonstrated a sound policy justification for the *Open Internet Order.* Specifically, the court sustained the Commission's findings that ''absent rules such as those set forth in the *Open Internet Order,* broadband providers represent a threat to Internet openness and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment.''

71. Despite upholding the Commission's authority and the basic rationale supporting the *Open Internet Order,* the court struck down the no-blocking and antidiscrimination rules as at odds with section 3(51) of the Communications Act, holding that it prohibits the Commission from exercising its section 706 authority to impose common carrier regulation on a service not classified as a ''telecommunications service,'' and section 332(c)(2), which prohibits common carrier treatment of ''private mobile services.'' The D.C. Circuit vacated the no-blocking and antidiscrimination rules because it found that they impermissibly regulated fixed broadband providers as common carriers, which conflicted with the Commission's prior classification of fixed broadband Internet access service as an ''information service'' rather than a telecommunications service. Likewise, the court found that the no-blocking rule as applied to mobile broadband conflicted with the Commission's earlier classification of mobile broadband service as a private mobile service rather than a ''commercial mobile service.'' The *Verizon* court held that the ''no unreasonable discrimination'' standard adopted in the *Open Internet Order* was insufficiently distinguishable from the ''nondiscrimination'' standard applicable to common carriers. Central to the court's rationale was its finding that, as formulated in the *Open Internet Order,* both rules improperly limited fixed broadband Internet access providers' ability to engage in ''individualized bargaining.''

72. Following the D.C. Circuit's ruling, on May 15, 2014 the Commission issued a Notice of Proposed Rulemaking (*2014 Open Internet NPRM*) to respond to the lack of conduct-based rules to protect and promote an open Internet following the D.C. Circuit's opinion in *Verizon* v. *FCC.* The Commission began the NPRM with a fundamental question: ''What is the right public policy to ensure that the Internet remains open?'' While the NPRM put forth various proposals, it sought broad comment on alternative paths to the right public policy solution—including areas such as the proper scope of the rules; the best ways to define, prevent, and treat violations of practices that may threaten an open Internet (including paid prioritization); enhancements to the transparency rule; and the appropriate source of legal authority to support new open Internet rules.

73. The Commission took many steps to facilitate public engagement in response to the *2014 Open Internet NPRM*—including the establishment of a dedicated email address to receive comments, a mechanism for submitting large numbers of comments in bulk via a Comma Separated Values (CSV) file, and the release of the entire record of comments and reply comments as Open Data in a machine-readable format, so that researchers, journalists, and other parties could analyze and create visualizations of the record. In addition, Commission staff hosted a series of roundtables covering a variety of topics related to the open Internet proceeding, including events focused on different policy approaches to protecting the open Internet, mobile broadband, enforcement issues, technology, broadband economics, and the legal issues surrounding the Commission's proposals.

74. The public seized on these opportunities to comment, submitting an unprecedented 3.7 million comments by the close of the reply comment period on September 15, 2014, with more submissions arriving after that date. This record-setting level of public engagement reflects the vital nature of Internet openness and the importance of our getting the answer right in this proceeding. Quantitative analysis of the comment pool reveals a number of key insights. For example, by some estimates, nearly half of all comments received by the Commission were unique. While there has been some public dispute as to the percentage of comments taking one position or another, it is clear that the majority of comments support Commission action to protect the open Internet. Comments regarding the continuing need for open Internet rules, their legal basis, and their substance formed the core of the overall body of comments. In particular, support for the reclassification of broadband Internet access under Title II, opposition to fast lanes and paid prioritization, and unease regarding the market power of broadband Internet access service providers were themes frequently addressed by commenters. In offering this summary, we do not mean to overlook the diversity of views reflected in the impressively large record in this proceeding. Most of all, we are grateful to the public for using the power of the open Internet to guide us in determining how best to protect it.

*B. The Continuing Need for Open Internet Protections*

75. In its remand of the Commission's *Open Internet Order,* the D.C. Circuit affirmed the underlying basis for the Commission's open Internet rules, holding that ''the Commission [had] more than adequately supported and explained its conclusion that edge provider innovation leads to the expansion and improvement of broadband infrastructure.'' The court also found ''reasonable and grounded in substantial evidence'' the Commission's finding that Internet openness fosters the edge provider innovation that drives the virtuous cycle. The record on remand continues to convince us that broadband providers—including mobile broadband providers—have the incentives and ability to engage in practices that pose a threat to Internet openness, and as such, rules to protect the open nature of the Internet remain necessary. Today we take steps to ensure that the substantial benefits of Internet openness continue to be realized.

1. An Open Internet Promotes Innovation, Competition, Free Expression, and Infrastructure Deployment

76. In the *2014 Open Internet NPRM,* we sought comment on and expressed our continued commitment to an important principle underlying the Commission's prior policies—that the Internet's openness promotes innovation, investment, competition, free expression, and other national broadband goals. The record before us convinces us that these findings, made by the Commission in 2010 and upheld by the D.C. Circuit, remain valid. If anything, the remarkable increases in investment and innovation seen in recent years—while the rules were in place—bear out the Commission's view. For example, in addition to broadband infrastructure investment, there has been substantial growth in the digital app economy, video over broadband, and VoIP, as well as a rise in mobile e-commerce. Overall Internet adoption has also increased since 2010. Both within the network and at its edges, investment and innovation have flourished while the open Internet rules were in force.

77. The record before us also overwhelmingly supports the

proposition that the Internet's openness is critical to its ability to serve as a platform for speech and civic engagement, and that it can help close the digital divide by facilitating the development of diverse content, applications, and services. The record also supports the proposition that the Internet's openness continues to enable a ''virtuous [cycle] of innovation in which new uses of the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses.'' End users experienced the benefits of Internet openness that stemmed from the Commission's 2010 open Internet rules—increased consumer choice, freedom of expression, and innovation.

2. Broadband Providers Have the Incentive and Ability To Limit Openness

78. Broadband providers function as gatekeepers for both their end user customers who access the Internet, and for various transit providers, CDNs, and edge providers attempting to reach the broadband provider's end-user subscribers. As discussed in more detail below, broadband providers (including mobile broadband providers) have the economic incentives and technical ability to engage in practices that pose a threat to Internet openness by harming other network providers, edge providers, and end users.

a. Economic Incentives and Ability

79. In the *2014 Open Internet NPRM,* we sought to update the record with information about new and continuing incentives for broadband providers to limit Internet openness. As explained in detail in the *Open Internet Order,* broadband providers not only have the incentive and ability to limit openness, but they had done so in the past. (As the Commission explained in the *Open Internet Order,* examples such as the Madison River case, the Comcast-Bit Torrent case, and various mobile wireless Internet providers restricting customers' use of competitive payment applications, competitive voice applications, and remote video applications, indicate that broadband providers have the technical ability to act on incentives to harm the open Internet. The D.C. Circuit also found that these examples buttressed the Commission's conclusion that broadband providers' incentives and ability to restrict Internet traffic could interfere with the Internet's openness.) The D.C. Circuit found that the Commission ''adequately supported and explained'' that, absent open Internet rules, ''broadband providers represent a threat to Internet openness and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment.'' The record generated in this proceeding convinces us that the Commission's conclusion in the *Open Internet Order*—that providers of broadband have a variety of strong incentives to limit Internet openness—remains valid today.

80. Broadband providers' networks serve as platforms for Internet ecosystem participants to communicate, enabling broadband providers to impose barriers to end-user access to the Internet on one hand, and to edge provider access to broadband subscribers on the other. This applies to both fixed and mobile broadband providers. Although there is some disagreement among commenters, the record provides substantial evidence that broadband providers have significant bargaining power in negotiations with edge providers and intermediaries that depend on access to their networks because of their ability to control the flow of traffic into and on their networks. Another way to describe this significant bargaining power is in terms of a broadband provider's position as gatekeeper—that is, regardless of the competition in the local market for broadband Internet access, once a consumer chooses a broadband provider, that provider has a monopoly on access to the subscriber. Many parties demonstrated that both mobile and fixed broadband providers are in a position to function as a gatekeeper with respect to edge providers. Once the broadband provider is the sole provider of access to an end user, this can influence that network's interactions with edge providers, end users, and others. As the Commission and the court have recognized, broadband providers are in a position to act as a ''gatekeeper'' between end users' access to edge providers' applications, services, and devices and reciprocally for edge providers' access to end users. Broadband providers can exploit this role by acting in ways that may harm the open Internet, such as preferring their own or affiliated content, demanding fees from edge providers, or placing technical barriers to reaching end users. Without multiple, substitutable paths to the consumer, and the ability to select the most cost-effective route, edge providers will be subject to the broadband provider's gatekeeper position. The D.C. Circuit noted that the Commission ''convincingly detailed'' broadband providers' market position, which gives them ''the economic power to restrict edge-provider traffic and charge for the services they furnish edge providers,'' and further stated that the Commission reasonably explained that ''this ability to act as a 'gatekeeper' distinguishes broadband providers from other participants in the Internet marketplace who have no similar 'control [over] access to the Internet for their subscribers and for anyone wishing to reach those subscribers.''' (We find, for example, that even though edge providers may possess bargaining power, they do not have the same ability as broadband providers to control the flow of traffic or block access to the Internet. With respect to mobile, the presence of some additional retail competition is not enough to alter our conclusion here.) The ability of broadband providers to exploit this gatekeeper role could be mitigated if consumers multi-homed (*i.e.*, bought broadband service from multiple networks). However, multi-homing is not widely practiced and imposes significant additional costs on consumers. The gatekeeper role could also be mitigated if a consumer could easily switch broadband providers. But, as discussed further below, the evidence suggests otherwise.

81. The broadband provider's position as gatekeeper is strengthened by the high switching costs consumers face when seeking a new service. Among the costs that consumers may experience are: High upfront device installation fees; long-term contracts and early termination fees; the activation fee when changing service providers; and compatibility costs of owned equipment not working with the new service. Bundled pricing can also play a role, as ''single-product subscribers are four times more likely to churn than triple-play subscribers.'' These costs may limit consumers' willingness and ability to switch carriers, if such a choice is indeed available. Commenters also point to an information problem, whereby consumers are unsure about the causes of problems or limitations with their services—for example, whether a slow speed on an application is caused by the broadband provider or the edge provider—and as such consumers may not feel that switching providers will resolve their Internet access issues. Additionally, consumers on unlimited data plans may be confused by slowed data speeds because broadband providers have not adequately communicated contractually-imposed data management

practices and usage thresholds. Switching costs are also a critical factor that negatively impacts mobile broadband consumers, in particular due to the informational uncertainties mentioned below, among other reasons. Ultimately, when consumers face this kind of friction in switching to meaningful competitive alternatives, it decreases broadband provider' responsiveness to consumer demands and limits the provider's incentives to improve their networks. Additionally, 45 percent of households have only a single provider option for 25 Mbps/3 Mbps broadband service, indicating that 45 percent of households do not have any choices to switch to at this critical level of service.

82. Broadband providers may seek to gain economic advantages by favoring their own or affiliated content over other third-party sources. Technological advances have given broadband providers the ability to block content in real time, which allows them to act on their financial incentives to do so in order to cut costs or prefer certain types of content. Data caps or allowances, which limit the amount and type of content users access online, can have a role in providing consumers options and differentiating services in the marketplace, but they also can negatively influence customer behavior and the development of new applications. Similarly, broadband providers have incentives to charge for prioritized access to end users or degrade the level of service provided to non-prioritized content. When bandwidth is limited during peak hours, its scarcity can cause reliability and quality concerns, which increases broadband providers' ability to charge for prioritization. Such practices could result in so-called ''tolls'' for edge providers seeking to reach a broadband provider's subscribers, leading to reduced innovation at the edge, as well as increased rates for end users, reducing consumer demand, and further disrupting the virtuous cycle. Commenters expressed considerable concern regarding the harmful effects of paid prioritization on Internet openness. Further, as discussed above, a broadband provider's incentive to favor affiliated content or the content of unaffiliated firms that pay for it to do so, to block or degrade traffic, to charge edge providers for access to end users, and to disadvantage non-prioritized transmission all increase when end users are less able to respond by switching to rival broadband providers.

83. In addition to the harms outlined above, broadband providers' behavior has the potential to cause a variety of other negative externalities that hurt the open nature of the Internet. Broadband providers have incentives to engage in practices that will provide them short term gains but will not adequately take into account the effects on the virtuous cycle. In the *Open Internet Order,* the Commission found that the unaccounted-for harms to innovation are negative externalities, and are likely to be particularly large because of the rapid pace of Internet innovation, and wide-ranging because of the role of the Internet as a general purpose technology. Further, the Commission noted that a broadband provider may hesitate to impose costs on its own subscribers, but it will typically not take into account the effect that reduced edge provider investment and innovation has on the attractiveness of the Internet to end users that rely on other broadband providers—and will therefore ignore a significant fraction of the cost of forgone innovation. The record supports our view that these negative externality problems have not disappeared, and in some cases, may be more prevalent. In order to mitigate these negative results, the Commission needs to act to promote Internet openness.

84. A final point on this question of economic incentives and ability is worth noting. Broadband providers have the ability to act as gatekeepers even in the absence of ''the sort of market concentration that would enable them to impose substantial price increases on end users.'' We therefore need not consider whether market concentration gives broadband providers the ability to raise prices. The Commission came to this conclusion in the *Open Internet Order,* and we conclude the same here. As the Commission noted in the *Open Internet Order,* threats to Internet-enabled innovation, growth, and competition do not depend on broadband providers having market power with respect to their end users. In *Verizon,* the court agreed, explaining that ''broadband providers' ability to impose restrictions on edge providers simply depends on end users not being fully responsive to the imposition of such restrictions.'' (We note further that, of course, our reclassification of broadband Internet access service as a ''telecommunications service'' subject to Title II below likewise does not rely on such a test or any measure of market power. Indeed, our reclassification decision is based on whether BIAS meets the statutory definition of a ''telecommunications service,'' and not any additional economic circumstances.) As we have concluded in this section, this remains true today. (We note, however, that in areas where there are limited competitive alternatives, this may exacerbate other problems such as the ability to switch from one provider to another.)

b. Technical Ability

85. As the Commission explained in the *Open Internet Order,* past instances of abuse indicate that broadband providers have the technical ability to act on incentives to harm the open Internet. Broadband providers have a variety of tools at their disposal that can be used to monitor and regulate the flow of traffic over their networks—giving them the ability to discriminate should they choose to do so. Techniques used by broadband providers to identify and select traffic may include approaches based on packet payloads (using deep packet inspection), network or transport layer headers (*e.g.,* port numbers or priority markings), or heuristics (*e.g.,* the size, sequencing, and/or timing of packets). Using these techniques, broadband providers may apply network practices to traffic that has a particular source or destination, that is generated by a particular application or by an application that belongs to a particular class of applications, that uses a particular application- or transport-layer protocol, or that is classified for special treatment by the user, application, or application provider. Application-specific network practices depend on the broadband provider's ability to identify the traffic associated with particular uses of the network. Some of these application-specific practices may be reasonable network management, *e.g.,* tailored network security practices. However, some of these techniques may also be abused. Deep packet inspection, for example, may be used in a manner that may harm the open Internet, *e.g.,* to limit access to certain Internet applications, to engage in paid prioritization, and even to block certain content. Similarly, traffic control algorithms can be abused, *e.g.,* to give certain packets favorable placement in queues or to send packets along less congested routes in a manner contrary to end user preferences. Use of these techniques may ultimately affect the quality of service that users receive, which could effectively force edge providers to enter into paid prioritization agreements to prevent poor quality of content to end users.

3. Mobile Broadband Services

86. We have discussed above the incentives and ability of broadband providers to act in ways that limit Internet openness, regardless of the

specific technology platform used by the provider. A significant subject of discussion in the record, however, concerned mobile broadband providers specifically, and we therefore believe it is appropriate to address here the incentive and ability that these providers have to limit Internet openness. As the Commission noted in the *Open Internet Order,* ''[c]onsumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission are as important when end users are accessing the Internet via mobile broadband as via fixed.'' The Commission noted that ''there have been instances of mobile providers blocking certain third-party applications, particularly applications that compete with the provider's own offerings . . . .'' However, the Commission also noted the nascency of the mobile broadband industry, citing the recent development of ''app'' stores, and what it characterized at the time as ''new business models for mobile broadband providers, including usage-based pricing.'' Furthermore, the Commission at that time found that ''[m]obile broadband speeds, capacity, and penetration [were] typically much lower than for fixed broadband'' and noted that carriers had only begun to offer 4G service.

87. Citing these factors, as well as greater consumer choice, ''meaningful recent moves toward openness in and on mobile broadband networks,'' and the operational constraints faced by mobile broadband providers, the Commission applied its open Internet rules to mobile broadband, but distinguished between fixed and mobile broadband in some regards: While it applied the same transparency rule to both fixed and mobile network providers, it adopted a different no-blocking standard for mobile broadband Internet access service, and excluded mobile broadband from the unreasonable discrimination rule. In the *2014 Open Internet NPRM,* the Commission tentatively concluded that it should maintain the same approach going forward, but recognized that there have been significant changes since 2010 in the mobile marketplace. The Commission sought comment on whether those changes should lead it to revisit the treatment of mobile broadband services.

88. Today, we find that changes in the mobile broadband marketplace warrant a revised approach. We find that the mobile broadband marketplace has evolved, and continues to evolve, but is no longer in a nascent stage. As discussed below, mobile broadband networks are faster, more broadly deployed, more widely used, and more technologically advanced than they were in 2010. We conclude that it would benefit the millions of consumers who access the Internet on mobile devices to apply the same set of Internet openness protections to both fixed and mobile networks.

89. Network connection speed and data consumption have exploded. For 2010, Cisco reported an average mobile network connection speed of 709 kbps. Since that time there has been massive expansion of mobile broadband networks, providing vastly increased download speeds. For 2013, Cisco reported an average mobile connection speed of 2,058 kbps. This increase in speed is partially due to the deployment of faster network technologies. Currently, mobile broadband networks provide coverage and services using a variety of 3G and 4G technologies, including, most importantly, LTE. As a consequence of the growing deployment of next generation networks, there has been an increase of more than 200,000 percent in the number of LTE subscribers, from approximately 70,000 in 2010 to over 140 million in 2014. Concurrent with these substantial changes in mobile broadband deployment and download speeds, mobile data traffic has exploded, increasing from 388 billion MB in 2010 to 3.23 trillion MB in 2013. AT&T reports that its wireless data traffic has grown 100,000 percent between 2007 and 2014 and 20,000 percent over the past five years. T-Mobile states that ''data usage continues to expand exponentially, with year-to-year increases of roughly 120 percent.''

90. As consumers use smartphones and tablets more, they increasingly rely on mobile broadband as a pathway to the Internet. The Internet Association argues that mobile Internet access is essential, since many Americans ''are wholly reliant on mobile wireless for Internet access.'' In addition, evidence shows that consumers in certain demographic groups, including low income and rural consumers and communities of color, are more likely to rely on mobile as their only access to the Internet. Citing data from the Pew Research Center's Internet & American Life Project, OTI states that ''[t]he share of Americans relying exclusively on their smartphone[s] to access the Internet is far higher among Hispanics, Blacks, and adults aged 18–29, and households earning less than $30,000 a year.'' According to data from the National Health Interview Survey, 44 percent of households were ''wireless-only'' during January–June 2014, compared to 31.6 percent during January–June 2011. These data also show that 59.1 percent of adults living in poverty reside in wireless-only households, relative to 40.8 percent of higher income adults. Additionally, rural consumers and businesses often have access to fewer options for Internet service, meaning that these customers may have limited alternatives when faced with restrictions to Internet openness imposed by their mobile provider. Furthermore, just as consumer reliance on mobile broadband has grown, edge providers increasingly rely on mobile broadband to reach their customers. Microsoft states, for example, that, ''with 'the pressure . . . only increasing to either go mobile or go home,' edge providers frequently introduce new edge services on mobile platforms first, and the success or failure of these edge providers' businesses often depends in large part on their mobile offerings.''

91. Furthermore, the technology underlying today's mobile broadband networks, as compared to those deployed in 2010, not only provides operators with a greater ability to manage their networks consistent with the rules we adopt today, but also gives those operators a greater ability to engage in conduct harmful to the virtuous cycle in the absence of open Internet rules. As discussed above, certain behaviors by broadband providers may impose negative externalities on the Internet ecosystem, resulting in less innovation from edge providers. We find that the same is true today for mobile wireless broadband providers, particularly as mobile broadband technology has become more widespread and mobile broadband services have become more integrated into the economy.

92. In view of the evidence showing the evolution of the mobile broadband marketplace, we conclude that it would best serve the public interest to revise our approach for mobile broadband services and apply the same openness requirements as those applied to providers of fixed broadband services. The Commission has long recognized that the Internet should remain open for consumers and innovators alike, regardless of the different technologies and services through which it may be accessed. Although the Commission found in 2010 that conditions at that time warranted a more limited application of open Internet rules to mobile broadband services, it nevertheless recognized the importance of freedom and openness for users of mobile broadband networks, finding that ''consumer choice, freedom of expression, end-user control,

competition, and the freedom to innovate without permission are as important when end users are accessing the Internet via mobile broadband as via fixed.'' In contrast to the state of the mobile broadband marketplace when the Commission adopted the 2010 open Internet rules, the evidence in the record today shows how mobile broadband services have evolved to become essential, critical means of access to the Internet for millions of consumers every day. Because of this evolution and the widespread use of mobile broadband services, maintaining a regime under which fewer protections apply in a mobile environment risks creating a substantively different Internet experience for mobile broadband users as compared to fixed broadband users. Broadband users should be able to expect that they will be entitled to the same Internet openness protections no matter what technology they use to access the Internet. We agree with arguments made by a large number of commenters that applying a consistent set of requirements will help ensure that all consumers can benefit from full access to an open and robust Internet. We note that evidence in the record indicates that mobile broadband providers themselves have recognized the importance of open Internet practices for mobile broadband consumers.

93. Despite their support of open Internet principles, several of the nationwide mobile providers oppose broader openness requirements for mobile broadband, arguing that additional rules are unnecessary in the mobile broadband market. T-Mobile, for example, argues that ''robust retail competition in the mobile broadband market already constrains mobile provider behavior.'' Verizon comments that ''consumer choice and competition also have ensured a differentiated marketplace in which providers routinely develop innovative offerings designed to outcompete competitors' offerings.'' AT&T contends that additional rules are unnecessary as mobile broadband providers are already investing in the networks, innovating, reducing prices, and thriving. CTIA contends that ''the robust competitive conditions in the mobile broadband marketplace are a defining differentiator'' and that ''any new open Internet framework should account for the competitive mobile dynamic.''

94. Based upon the significant changes in mobile broadband since 2010 discussed above, including the increased use of mobile broadband and the greater ability of mobile broadband providers to engage in conduct harmful to the virtuous cycle, we are not persuaded that maintaining fewer open Internet protections for consumers of mobile broadband services would serve the public interest. Contrary to provider arguments that applying a broader set of openness requirements will stifle innovation and chill investment, we find that the rules we adopt today for all providers of services will promote innovation, investment, and competition. As we discuss above, an open Internet enables a virtuous cycle where new uses of the network drive consumer demand, which drives network improvements, which result in further innovative uses. We agree with commenters that ''mobile is a key component'' of the virtuous cycle. OTI comments that ''a variety of economic analyses suggest that the Internet's openness is a key driver of its value . . . . Other economic studies have found that non-neutral conditions in the broadband market might maximize profits for broadband providers but would ultimately minimize consumer welfare . . . . There is significant evidence that a vibrant and neutral online economy is critical for a healthy technology industry, which is a significant creator of jobs in the U.S.'' We find that these arguments apply to mobile broadband providers as well as to fixed, and apply even though there may be more competition among mobile broadband providers.

95. We note that the Commission's experience with applying open platform rules to Upper 700 MHz C Block licensees, including Verizon Wireless, has shown that openness principles can be applied to mobile services without inhibiting a mobile provider's ability to compete and be successful in the marketplace. We find that it is reasonable to conclude that, even with broader application of Internet openness requirements, mobile broadband providers will similarly continue to compete and develop innovative products and services. We also expect that the force of consumer demand that led mobile broadband providers to invest in their networks over the past four years will likely continue to drive substantial investments in mobile broadband networks under the open Internet regime we adopt today.

96. Although mobile providers generally argue that additional rules are not necessary to deter practices that would limit Internet openness, concerns related to the openness practices of mobile broadband providers have arisen. As we noted in the *2014 Open Internet NPRM,* in 2012, the Commission reached a $1.25 million settlement with Verizon for restricting tethering apps on Verizon smartphones, based on openness requirements attached to Verizon's Upper 700 MHz C Block licenses. Also in 2012, consumers complained when they encountered problems accessing Apple's FaceTime application on AT&T's network. More recently, significant concern has arisen when mobile providers' have attempted to justify certain practices as reasonable network management practices, such as applying speed reductions to customers using ''unlimited data plans'' in ways that effectively force them to switch to price plans with less generous data allowances. As Consumers Union observes, many mobile broadband provider practices are non-transparent, because customers receive ''no warning or explanation of when their speeds will be slowed down.'' Other commenters such as OTI also cite mobile providers' blocking of the Google Wallet e-payment application. Although providers claimed that the blocking was justified based on security concerns, OTI notes that ''this carrier behavior raised anticompetitive concerns when AT&T, Verizon and T-Mobile later unveiled their own mobile payment application, a competitor to Google Wallet . . . .'' Microsoft also describes further potential for abuse based on its experience in other countries without open Internet protections, claiming, for example, that ''several broadband access providers around the world have interfered or degraded Skype traffic on their networks.'' A recent survey of European Internet users found that respondents reported experiencing problems with ''blocking of internet content.'' Mobile services notably accounted for a significant percentage of negative experiences reported in the survey. OTI argues that, even with competition, mobile providers have an interest in seeking rents from edge providers and ''in securing a competitive advantage for their own competing apps, content and services.'' We agree, and find that the rules we adopt today for mobile network providers will help guard against future incidents that have the potential to affect Internet openness and undermine a mobile broadband consumer's right to access a free and open Internet.

97. In addition, we agree with those commenters that argue that mobile broadband providers have the incentives and ability to engage in practices that would threaten the open nature of the Internet, in part due to consumer switching costs. Switching costs are a significant factor in enabling the ability of mobile broadband providers to act as gatekeepers.

Microsoft states that ''for the large number of applications that are available only in the mobile context, mobile broadband access providers today can be an edge provider's only option for reaching a particular end user,'' and argues that, because of high switching costs, few mobile broadband consumers routinely switch providers. Therefore, Microsoft argues, ''even if there is more than one mobile broadband access provider in a specific market, there may not be effective competitive alternatives (for edge providers or consumers) and these mobile broadband access providers retain the ability to act in a manner that undermines the competitive neutrality of the online marketplace.''

98. The level of wireless churn, when viewed in conjunction with data on consumer satisfaction, is consistent with the existence of important switching costs for customers. Based on results from surveys, OTI and Consumers Union argue that switching costs have depressed mobile wireless churn rates, meaning that customers may remain with their service providers even when they are dissatisfied. Consumers Union cites a February 2015 *Consumer Reports* survey showing that ''27 percent of mobile broadband consumer[s] who are dissatisfied with their mobile broadband service provider are reluctant to switch carriers'' due to several factors. That many customers stay with their mobile wireless providers, despite expressing dissatisfaction with their current provider and despite the availability of alternate plans from other providers, suggests the presence of significant barriers to switching. Furthermore, this has been a period of market and spectrum consolidation, which has decreased the choices available to consumers in many parts of the country. For example, Vonage argues that ''recent mergers between AT&T and Leap, and T-Mobile and MetroPCS have reduced the ability of wireless end users to switch to competing providers in the event of potential discrimination against the edge services they may want to access.'' Choices may be particularly limited in rural areas, both because fewer service providers tend to operate in these regions and because consumers may encounter difficulties in porting their numbers from national to local service providers.

99. Switching costs may arise due to a number of factors that affect mobile consumers. For example, consumers may face costs due to informational uncertainty, particularly in the context of concerns over open Internet restrictions. The provision of wireless service involves the interaction between the wireless network operator, the various edge providers, the customer's handset or other equipment, and the conditions present in the specific location the customer wishes to use the service. In this environment, it can be very difficult for customers to ascertain the source of a service disruption, and hence whether switching wireless providers would solve the problem. Additionally, product differentiation can make it difficult for consumers to compare plans, which may also increase switching costs. Finally, customers may face a variety of hassle-related and financial switching costs. Disconnecting an existing service and activating a new one may involve early termination fees (ETFs), coordinating with multiple members of a family plan, billing set-up, transferring personal files, and porting phone numbers, each of which may create delays or difficulties for customers. As part of this process, some customers may need to replace their equipment, which may not be compatible with their new mobile service provider's network. OTI and Consumers Union argue that moving multiple members of a shared or family plan may be particularly expensive, since ''[n]ot only do groups face the cost of multiple ETFs, but frequently the contract termination dates become nonsynchronous due to the addition of new lines and individuals upgrading their devices at different points in time.'' Furthermore, OTI and Consumers Union argue that these costs affect an increasingly large proportion of consumers, since the penetration of shared plans has increased such that the majority of AT&T and Verizon Wireless customers now have shared plans.

100. AT&T, T-Mobile, and Verizon argue that the factors that led the Commission to adopt a more limited set of openness rules for mobile in 2010 remain valid today. They argue that mobile broadband networks should not be viewed as mature as mobile technologies continue to develop and evolve. They also contend that the extraordinary growth in use of mobile broadband services requires that providers have more flexibility to be able to handle the increased traffic and ensure quality of service for subscribers. T-Mobile, for example, asserts that ''while mobile networks are more robust and offer greater speeds and capacity than they did when the 2010 rules were enacted, they also face greater demands; their need for agile and dynamic network management tools has actually increased.''

101. We recognize that mobile service providers must take into account factors such as mobility and reliance on spectrum. As discussed more fully below in the context of each of the rules, however, we find that the requirements we adopt today are sufficiently tailored to provide carriers with the flexibility they need to accommodate these conditions. Moreover, as described further below, we conclude that retaining an exception to the no-blocking rule, the no-throttling rule, and the no-unreasonable interference/disadvantage standard we adopt today for reasonable network management will allow sufficient flexibility for mobile service providers.

4. The Commission Must Act To Preserve Internet Openness

102. Given that broadband providers—both fixed and mobile—have both the incentives and ability to harm the open Internet, we again conclude that the relatively small incremental burdens imposed by our rules are outweighed by the benefits of preserving the open nature of the Internet, including the continued growth of the virtuous cycle of innovation, consumer demand, and investment. We note, for example, that the disclosure requirements adopted in this order are widely understood, have industry-based definitions, and are commonly used in commercial Service Level Agreements by many broadband providers. Open Internet rules benefit investors, innovators, and end users by providing more certainty to each regarding broadband providers' behavior, and helping to ensure the market is conducive to optimal use of the Internet. Open Internet rules are also critical for ensuring that people living and working in rural areas can take advantage of the substantial benefits that the open Internet has to offer. In minority communities where many individuals' only Internet connection may be through a mobile device, robust open Internet rules help make sure these communities are not negatively impacted by harmful broadband provider conduct. Such rules additionally provide essential safeguards to ensure that the Internet flourishes as a platform for education and research.

103. The Commission's historical open Internet policies and rules have blunted the incentives, discussed above, to engage in behavior harmful to the open Internet. Commenters who argue that rules are not necessary overlook the role that the Commission's rules and policies have played in fostering that result. Without rules in place to protect the open Internet, the overwhelming incentives broadband providers have to act in ways that are harmful to

investment and innovation threaten both broadband networks and edge content. Paid prioritization agreements, for example, have the potential to distort the market by causing prices not to reflect efficient cost recovery and by altering consumer choices for content and edge providers. The record reflects the view that paid arrangements for priority treatment, such as broadband providers discriminating among content providers or prioritizing one provider's or its own content over others, likely damage the open Internet, harming competition and consumer choice. Additionally, blocking and throttling harm a consumer's right to access lawful content, applications, and services, and to use non-harmful devices.

*C. Strong Rules That Protect Consumers From Practices That Can Threaten the Open Internet*

104. We are keenly aware that in the wake of the *Verizon* decision, there are no rules in place to prevent broadband providers from engaging in conduct harmful to Internet openness, such as blocking a consumer from accessing a requested Web site or degrading the performance of an innovative Internet application. (We acknowledge other laws address behavior similar to that which our rules are designed to prevent; however, as discussed below, we do not find existing laws sufficient to adequately protect consumers' access to the open Internet. For example, some parties have suggested that existing antitrust laws would address discriminatory conduct of an anticompetitive nature. We also note that certain ''no blocking'' obligations continue to apply to the use of Upper 700 MHz C Block licenses.) While many providers have indicated that, at this time, they do not intend to depart from the previous rules, an open Internet is too important to consumers and innovators to leave unprotected. Therefore, we today reinstate strong, enforceable open Internet rules. As in 2010, we believe that conduct-based rules targeting specific practices are necessary.

105. *No-Blocking.* First, we adopt a bright-line rule prohibiting broadband providers from blocking lawful content, applications, services, or non-harmful devices. This ''no-blocking'' principle has long been a cornerstone of the Commission's policies. While first applied in the Internet context as part of the Commission's *Internet Policy Statement,* the no-blocking concept dates back to the Commission's protection of end users' rights to attach lawful, non-harmful devices to communications networks.

106. *No-Throttling.* Second, we adopt a separate bright-line rule prohibiting broadband providers from impairing or degrading lawful Internet traffic on the basis of content, application, service, or use of non-harmful device. This conduct was prohibited under the commentary to the no-blocking rule adopted in the *2010 Open Internet Order.* However, to emphasize the importance of this concept we delineate under a separate rule a ban on impairment or degradation, to prevent broadband providers from engaging in behavior other than blocking that negatively impacts consumers' use of content, applications, services, and devices.

107. *No Paid Prioritization.* Third, we respond to the deluge of public comment expressing deep concern about paid prioritization. Under the rule we adopt today, the Commission will ban all paid prioritization subject to a narrow waiver process.

108. *No-Unreasonable Interference/Disadvantage Standard.* In addition to these three bright-line rules, we also set forth a no-unreasonable interference/disadvantage standard, under which the Commission can prohibit practices that unreasonably interfere with the ability of consumers or edge providers to select, access, and use broadband Internet access service to reach one another, thus causing harm to the open Internet. This no-unreasonable interference/disadvantage standard will operate on a case-by-case basis and is designed to evaluate other current or future broadband Internet access provider policies or practices—not covered by the bright-line rules— and prohibit those that harm the open Internet.

109. *Transparency Requirements.* We also adopt enhancements to the existing transparency rule to more effectively serve end-user consumers, edge providers of broadband products and services, and the Internet community. These enhanced transparency requirements are modest in nature, and we decline to adopt requirements proposed in the NPRM that raised concern for smaller broadband providers in particular, such as disclosures as to the source of congestion.

1. Clear, Bright Line Rules

110. The record in this proceeding reveals that three practices in particular demonstrably harm the open Internet: Blocking, throttling, and paid prioritization. For the reasons described below, we find each of these practices is inherently unjust and unreasonable, in violation of section 201(b) of the Act, and that these practices threaten the virtuous cycle of innovation and investment that the Commission intends to protect under its obligation and authority to take steps to promote broadband deployment under section 706 of the 1996 Act. We accordingly adopt bright-line rules banning blocking, throttling, and paid prioritization by providers of both fixed and mobile broadband Internet access service.

a. Preventing Blocking of Lawful Content, Applications, Services, and Non-Harmful Devices

111. We continue to find, for the same reasons the Commission found in the *2010 Open Internet Order* and reiterated in the *2014 Open Internet NPRM,* that ''the freedom to send and receive lawful content and to use and provide applications and services without fear of blocking is essential to the Internet's openness.'' Because of broadband providers' incentives to block competitors' content, the need to protect a consumer's right to access lawful content, applications, services, and to use non-harmful devices is as important today as it was when the Commission adopted the first no-blocking rule in 2010.

112. In the *2014 Open Internet NPRM,* the Commission tentatively concluded that it should re-adopt the text of the vacated no-blocking rule. The record overwhelmingly supports the notion of a no-blocking principle and re-adopting the text of the original rule. (A broad cross-section of broadband providers, edge providers, public interest organizations, and individuals support this approach.) Further, we note that many broadband providers still voluntarily continue to abide by the 2010 no-blocking rule, even though they have not been legally required to do so by a rule of general applicability since the *Verizon* decision. After consideration of the record and guidance from the D.C. Circuit, we adopt the following no-blocking rule applicable to both fixed and mobile broadband providers of broadband Internet access service:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.*

113. Similar to the 2010 no-blocking rule, the phrase ''content, applications, and services'' again refers to all traffic transmitted to or from end users of a broadband Internet access service, including traffic that may not fit clearly into any of these categories. Further, the no-blocking rule adopted today again

applies to transmissions of lawful content and does not prevent or restrict a broadband provider from refusing to transmit unlawful material, such as child pornography or copyright-infringing materials. (Similar to the 2010 no-blocking rule, this obligation does not impose any independent legal obligation on broadband providers to be the arbiter of what is lawful.) Today's no-blocking rule also entitles end users to connect, access, and use any lawful device of their choice, provided that the device does not harm the network. The no-blocking rule prohibits network practices that block a specific application or service, or any particular class of applications or services, unless it is found to be reasonable network management. Finally, as with the 2010 no-blocking rule, today's no-blocking rule prohibits broadband providers from charging edge providers a fee to avoid having the edge providers' content, service, or application blocked from reaching the broadband provider's end-user customer. (We note that during oral argument in the *Verizon* case, Verizon told the court that ''in paragraph 64 of the Order the Agency also sets forth the no charging of edge providers rule as a corollary to the no blocking rule, and that's a large part of what is causing us our harm here.'' In response, Judge Silberman stated, ''if you were allowed to charge, which are you assuming you're allowed to charge because of the anti-common carrier point of view, if somebody refused to pay then just like in the dispute between C[B]S and Warner, Time Warner . . . you could refuse to carry.'' Verizon's counsel responded: ''[r]ight.'' Verizon Oral Arg. Tr. at 28.)

114. *Rejection of the Minimum Level of Access Standard.* The *2014 Open Internet NPRM* proposed that the no-blocking rule would prohibit broadband providers from depriving edge providers of a minimum level of access to the broadband provider's subscribers and sought comment on how to define that minimum level of service. After consideration of the record, we reject the minimum level of access standard. Broadband providers, edge providers, public interest organizations, and other parties note the practical and technical difficulties associated with setting any such minimum level of access. For example, some parties note the uncertainty created by an indefinite standard. Other parties observe that in creating any such standard of service for no-blocking, the Commission risks jeopardizing innovation. We agree with these arguments and many others in the record expressing concern with the proposed minimum level of access standard.

115. The no-blocking rule we adopt today prohibits broadband providers from blocking access to lawful Internet content, applications, services, and non-harmful devices. We believe that this approach will allow broadband providers to honor their service commitments to their subscribers without relying upon the concept of a specified level of service to those subscribers or edge providers under the no-blocking rule. We further believe that the separate no-throttling rule discussed below provides appropriate protections against harmful conduct that degrades traffic but does not constitute outright blocking.

116. *Application of the No-Blocking Rule to Mobile.* In 2010, the Commission limited the no-blocking rule for mobile to lawful Web sites and applications that competed with a provider's voice or video telephony services, subject to reasonable network management. The *2014 Open Internet NPRM,* citing ''the operational constraints that affect mobile broadband services, the rapidly evolving nature of the mobile broadband technologies, and the generally greater amount of consumer choice for mobile broadband services than for fixed,'' proposed to retain the 2010 no-blocking rule. The Commission sought comment on this proposal.

117. For the reasons set forth above, including consumer expectations, the Commission's experience with open Internet regulations in the 700 MHz C Block, and the advances in the mobile broadband industry since 2010, we conclude instead that the same no-blocking rule should apply to both fixed and mobile broadband Internet access services. Accordingly, as with fixed service, a consumer's mobile broadband provider cannot block a consumer from accessing lawful content, applications, services, or non-harmful devices, regardless of whether the content, applications, services, or devices (In evaluating the reasonable network management exception to the no-blocking rule, the Commission will drawing upon its experience with the no-blocking rule in the 700 MHz C Block.) compete with a provider's own offerings, subject to reasonable network management.

118. All national mobile broadband providers, among others, opposed the application of the broader no-blocking rule to mobile broadband, arguing, for example, that mobile broadband providers need the ability to block unwanted traffic and spam. They also argue that the particular challenges of managing a mobile broadband network, for example the unknown effects of apps, require additional flexibility to block traffic. As discussed below, we recognize that additional flexibility may be required in mobile network management practices, but find that the reasonable network management exception we adopt today allows sufficient flexibility: The blocking of harmful or unwanted traffic remains a legitimate network management purpose, and is permissible when pursued through reasonable network management practices.

b. Preventing Throttling of Lawful Content, Applications, Services, and Non-Harmful Devices

119. In the *2014 Open Internet NPRM,* the Commission proposed that degradation of lawful content or services below a specified level of service would violate a no-blocking rule. While certain broadband Internet access provider conduct may result in degradation of an end user's Internet experience that is tantamount to blocking, we believe that this conduct requires delineation in an explicit rule rather than through commentary as part of the no-blocking rule. Thus, we adopt a separate no-throttling rule applicable to both fixed and mobile providers of broadband Internet access service:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management.*

120. With the no-throttling rule, we ban conduct that is not outright blocking, but inhibits the delivery of particular content, applications, or services, or particular classes of content, applications, or services. Likewise, we prohibit conduct that impairs or degrades lawful traffic to a non-harmful device or class of devices. We interpret this prohibition to include, for example, any conduct by a broadband Internet access service provider that impairs, degrades, slows down, or renders effectively unusable particular content, services, applications, or devices, that is not reasonable network management. For purposes of this rule, the meaning of ''content, applications, and services'' has the same as the meaning given to this phrase in the no-blocking rule. Like the no-blocking rule, broadband providers may not impose a fee on edge providers to avoid having the edge providers' content, service, or application throttled. Further, transfers of unlawful content or unlawful transfers of content are not protected by the no-throttling rule. We will consider

potential violations of the no-throttling rule under the enforcement provisions outlined below.

121. We find that a prohibition on throttling is as necessary as a rule prohibiting blocking. Without an equally strong no-throttling rule, parties note that the no-blocking rule will not be as effective because broadband providers might otherwise engage in conduct that harms the open Internet but falls short of outright blocking. For example, the record notes the existence of numerous practices that broadband providers can engage in to degrade an end user's experience.

122. Because our no-throttling rule addresses instances in which a broadband provider targets particular content, applications, services, or non-harmful devices, it does not address a practice of slowing down an end user's connection to the Internet based on a choice made by the end user. For instance, a broadband provider may offer a data plan in which a subscriber receives a set amount of data at one speed tier and any remaining data at a lower tier. If the Commission were concerned about the particulars of a data plan, it could review it under the no-unreasonable interference/disadvantage standard. In contrast, if a broadband provider degraded the delivery of a particular application (*e.g.,* a disfavored VoIP service) or class of application (*e.g.,* all VoIP applications), it would violate the bright-line no-throttling rule. We note that user-selected data plans with reduced speeds must comply with our transparency rule, such that the limitations of the plan are clearly and accurately communicated to the subscriber.

123. The no-throttling rule also addresses conduct that impairs or degrades content, applications, or services that might compete with a broadband provider's affiliated content. For example, if a broadband provider and an unaffiliated entity both offered over-the-top applications, the no-throttling rule would prohibit broadband providers from constraining bandwidth for the competing over-the-top offering to prevent it from reaching the broadband provider's end user in the same manner as the affiliated application.

124. As in the *2010 Open Internet Order,* we continue to recognize that in order to optimize the end-user experience, broadband providers must be permitted to engage in reasonable network management practices. We emphasize, however, that to be eligible for consideration under the reasonable network management exception, a network management practice that would otherwise violate the no-throttling rule must be used reasonably and primarily for network management purposes, and not for business purposes. (While not within the definition of ''throttling'' for purposes of our no-throttling rule, the slowing of subscribers' content on an application agnostic basis, including as an element of subscribers' purchased service plans, will be evaluated under the transparency rule and the no-unreasonable interference/disadvantage standard.)

c. No Paid Prioritization

125. In the *2014 Open Internet NPRM,* the Commission sought comment on suggestions to impose a flat ban on paid prioritization services, including whether all paid prioritization practices, or some of them, could be treated as *per se* violations of the commercially-reasonable standard or any other standard based on any source of legal authority. For reasons explained below, we conclude that paid prioritization network practices harm consumers, competition, and innovation, as well as create disincentives to promote broadband deployment and, as such, adopt a bright-line rule against such practices. Accordingly, today we ban arrangements in which the broadband service provider accepts consideration (monetary or otherwise) from a third party to manage the network in a manner that benefits particular content, applications, services, or devices. We also ban arrangements where a provider manages its network in a manner that favors the content, applications, services or devices of an affiliated entity. (We consider arrangements of this kind to be paid prioritization, even when there is no exchange of payment or other consideration between the broadband Internet access service provider and the affiliated entity.) Any broadband provider that engages in such practices will be subject to enforcement action, including forfeitures and other penalties. (Other forms of traffic prioritization, including practices that serve a public safety purpose, may be acceptable under our rules as reasonable network management.) We adopt the following rule banning paid prioritization arrangements:

*A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization.*

*''Paid prioritization'' refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity.*

126. The paid prioritization ban we adopt today is based on the record that has developed in this proceeding. The record is rife with commenter concerns regarding preferential treatment arrangements, with many advocating a flat ban on paid prioritization. Commenters assert that permitting paid prioritization will result in the bifurcating of the Internet into a ''fast'' lane for those willing and able to pay and a ''slow'' lane for everyone else. As several commenters observe, allowing for the purchase of priority treatment can lead to degraded performance—in the form of higher latency, increased risk of packet loss, or, in aggregate, lower bandwidth—for traffic that is not covered by such an arrangement. Commenters further argue that paid prioritization will introduce artificial barriers to entry, distort the market, harm competition, harm consumers, discourage innovation, undermine public safety and universal service, and harm free expression. Vimeo, for instance, argues that paid prioritization ''would disadvantage user-generated video and independent filmmakers'' that lack the resources of major film studios to pay priority rates for dissemination of content. Engine Advocacy meanwhile asserts that ''[s]ome unfunded early startups may not be able to afford [to pay for priority treatment] (particularly if the product would be data-intensive) and will not start a company,'' resulting in ''reduce[d] entrepreneurship.'' Commenters assert that if paid prioritization became widespread, it would make reliance on consumers' ordinary, non-prioritized access to the Internet an increasingly unattractive and competitively nonviable option. The Commission's conclusion is supported by a well-established body of economic literature, (The access provided by the core network is an intermediate input into the myriad of final products produced by edge providers. While it is granted that for a firm selling final goods, price discrimination can be both profitable and enhance welfare, it has been argued that the reverse is also true when intermediate goods are considered.) including Commission staff working papers.

127. It is well-established that broadband providers have both the incentive and ability to engage in paid prioritization. In its *Verizon* opinion, the DC Circuit noted that providers ''have powerful incentives to accept fees from edge providers, either in return for

excluding their competitors or for granting them prioritized access to end users.'' Indeed, at oral argument Verizon's counsel announced that ''but for [the *2010 Open Internet Order*] rules we would be exploring [such] commercial arrangements.'' While we appreciate that several broadband providers have claimed that they do not engage in paid prioritization or that they have no plans to do so, (For example, we note that in Verizon's letter to Chairman Leahy, the company states ''[a]s we have said before, and affirm again here, Verizon has no plans to engage in paid prioritization of Internet traffic.'' Verizon Letter to Leahy at 1. However, in contrast to this statement, at oral argument in the *Verizon* case, counsel for Verizon explained that the company would pursue such arrangements if not for the 2010 Open Internet rules which prevented them.) such statements do not have the force of a legal rule that prevents them from doing so in the future. The future openness of the Internet should not turn on the decision of a particular company. We are concerned that if paid prioritization practices were to become widespread, the damage to Internet openness could be difficult to reverse. We agree that ''[u]nraveling a web of discriminatory deals after significant investments have been made, business plans have been built, and technologies have been deployed would be a complicated undertaking both logistically and politically.'' Further, documenting the harms could prove challenging, as it is impossible to identify small businesses and new applications that are stifled before they become commercially viable. Prioritizing some traffic over others based on payment or other consideration from an edge provider could fundamentally alter the Internet as a whole by creating artificial motivations and constraints on its use, damaging the web of relationships and interactions that define the value of the Internet for both end users and edge providers, and posing a risk of harm to consumers, competition, and innovation. Thus, because of the very real concerns about the chilling effects that preferential treatment arrangements could have on the virtuous cycle of innovation, consumer demand, and investment, we adopt a bright-line rule banning paid prioritization arrangements. (Some commenters argue that consumer disclosures about such practices are sufficient. However, the average consumer does not have the time or specialized knowledge to sort through the implications, and regardless, in many areas of the country, consumers simply do not have multiple, equivalent choices.)

128. In arguing against such a ban, ADTRAN asserts that it would ''cement the advantages enjoyed by the largest edge providers that presently obtain the functional equivalent of priority access by constructing their own extensive networks that interconnect directly with the ISPs.'' We reject this argument. CDT correctly observes that ''[e]stablished entities with substantial resources will always have a variety of advantages'' over less established ones, notwithstanding any rules we adopt. We do not seek to disrupt the legitimate benefits that may accrue to edge providers that have invested in enhancing the delivery of their services to end users. On the contrary, such investments may contribute to the virtuous cycle by stimulating further competition and innovation among edge providers, to the ultimate benefit of consumers. We also clarify that the ban on paid prioritization does not restrict the ability of a broadband provider and CDN to interconnect.

129. We find that a flat ban on paid prioritization has advantages over alternative approaches identified in the record. Prohibiting this practice outright will help to foster broadband network investment by setting clear boundaries of acceptable and unacceptable behavior. It will also protect consumers against a harmful practice that may be difficult to understand, even if disclosed. In addition, this approach relieves small edge providers, innovators, and consumers of the burden of detecting and challenging instances of harmful paid prioritization. Given the potential harms to the virtuous cycle, we believe it is more appropriate to impose an *ex ante* ban on such practices, while entertaining waiver requests under exceptional circumstances.

130. Under our longstanding waiver rule, the Commission may waive any rule ''in whole or in part, for good cause shown.'' General waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In some cases, however, the Commission adopts specific rules concerning the factors that will be used to examine a waiver or exemption request. We believe that such guidance is appropriate here to make clear the very limited circumstances in which the Commission would be willing to allow paid prioritization. Accordingly, we adopt a rule concerning waiver of the paid prioritization ban that establishes a balancing test, as follows:

*The Commission may waive the ban on paid prioritization only if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet.*

131. In support of any waiver request, the applicant therefore must make two related showings. First, the applicant must demonstrate that the practice will have some significant public interest benefit, such as providing evidence that the practice furthers competition, innovation, consumer demand, or investment. Second, the applicant must demonstrate that the practice does not harm the nature of the open Internet, including, but not limited to, providing evidence that the practice:

- Does not materially degrade or threaten to materially degrade the broadband Internet access service of the general public;
- does not hinder consumer choice;
- does not impair competition, innovation, consumer demand, or investment; and
- does not impede any forms of expressions, types of service, or points of view.

132. An applicant seeking waiver relief under this rule faces a high bar. We anticipate granting such relief only in exceptional cases. (For instance, several commenters argue that paid prioritization arrangements could improve the provision of telemedicine services.)

2. No Unreasonable Interference or Unreasonable Disadvantage Standard for Internet Conduct

133. In the *2014 Open Internet NPRM,* the Commission tentatively concluded that it should adopt a rule requiring broadband providers to use ''commercially reasonable'' practices in the provision of broadband Internet access service, and sought comment on this approach. (The Commission also tentatively concluded that it should operate separately from the proposed no-blocking rule, *i.e.,* conduct acceptable under the no-blocking rule would still be subject to independent examination under the ''commercially reasonable'' standard, and sought comment on this approach.) The Commission also sought comment on whether there were alternative legal standards that the Commission should consider, or whether it should adopt a rule that prohibits unreasonable discrimination and, if so, what legal authority and theories it should rely upon to do so. In addition, the Commission sought comment on how it

can ensure that the rule it adopts sufficiently protects against harms to the open Internet, including broadband providers' incentives to disadvantage edge providers or classes of edge providers in ways that would harm Internet openness.

134. The Commission sought comment on what factors it should adopt to ensure commercially reasonable practices that will protect and promote Internet openness, and tentatively concluded that a review of the totality of the circumstances should be preserved to ensure that rules can be applied evenly and fairly in response to changing circumstances. The Commission also recognized that there have been significant changes in the mobile marketplace since 2010, and sought comment on whether and, if so, how these changes should affect the Commission's treatment of mobile services under the rules. (Specifically, the Commission sought comment on whether, under the commercially reasonable rule, mobile networks should be subject to the same totality-of-the circumstances test as fixed broadband, and whether the Commission should apply the commercially reasonable legal standard to mobile broadband.)

135. *Preventing Unreasonable Interference or Unreasonable Disadvantage that Harms Consumers and Edge Providers.* The three bright-line rules that we adopt today prohibit specific conduct that harms the open Internet. The open nature of the Internet has allowed new products and services to flourish and has broken down geographic barriers to communication, allowing information to flow freely. We believe the rules we adopt today will alleviate many of the concerns identified in the record regarding broadband provider practices that could upset these positive outcomes. However, while these three bright-line rules comprise a critical cornerstone in protecting and promoting the open Internet, we believe that there may exist other current or future practices that cause the type of harms our rules are intended to address. For that reason, we adopt a rule setting forth a no-unreasonable interference/disadvantage standard, under which the Commission can prohibit, on a case-by-case basis, practices that unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the Internet content, services, and applications of their choosing or of edge providers to access consumers using the Internet.

136. It is critical that access to a robust, open Internet remains a core feature of the communications landscape, but also that there remains leeway for experimentation with innovative offerings. Based on our findings that broadband providers have the incentive and ability to discriminate in their handling of network traffic in ways that can harm the virtuous cycle of innovation, increased end-user demand for broadband access, and increased investment in broadband network infrastructure and technologies, we conclude that a no-unreasonable interference/disadvantage standard to protect the open nature of the Internet is necessary. We adopt this standard to prohibit practices in the broadband Internet access provider's network that harm Internet openness, similar to the approach proposed by the Higher Education coalition and the Center for Democracy and Technology. Specifically, we require that:

*Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage (i) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.* (As in the no throttling rule, we include classes of content, applications, services, or devices.)

137. This ''no-unreasonable interference/disadvantage'' standard will be applied to carefully balance the benefits of innovation against harm to end users and edge providers. It also protects free expression, thus fulfilling the congressional policy that the Internet ''offer[s] a forum for true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.'' As the Commission found in 2010, and the *Verizon* court upheld, ''[r]estricting edge providers' ability to reach end users, and limiting end users' ability to choose which edge providers to patronize, would reduce the rate of innovation at the edge and, in turn, the likely rate of improvements to network infrastructure. Similarly, restricting the ability of broadband providers to put the network to innovative uses may reduce the rate of improvements to network infrastructure.'' Under the standard that we adopt today, the Commission can protect against harm to end users' or edge providers' ability to use broadband Internet access service to reach one another. Compared to the no unreasonable discrimination standard adopted by the Commission in 2010, the standard we adopt today is specifically designed to protect against harms to the open nature of the Internet. We note that the standard we adopt today represents our interpretation of sections 201 and 202 in the broadband Internet access context and, independently, our interpretation—upheld by the *Verizon* court—that rules to protect Internet openness promote broadband deployment via the virtuous cycle under section 706 of the 1996 Act.

a. Factors To Guide Application of the Rule

138. We adopt our tentative conclusion to follow a case-by-case approach, considering the totality of the circumstances, when analyzing whether conduct satisfies the no-unreasonable interference/disadvantage standard to protect the open Internet. Below we discuss a non-exhaustive list of factors we will use to assess such practices. In adopting this standard, we enable flexibility in business arrangements and ensure that innovation in broadband and edge provider business models is not unduly curtailed. We are mindful that vague or unclear regulatory requirements could stymie rather than encourage innovation, and find that this approach combined with the factors set out below will provide sufficient certainty and guidance to consumers, broadband providers, and edge providers—particularly smaller entities that might lack experience dealing with broadband providers—while also allowing parties flexibility in developing new services. (We also note that this Order permits parties to seek advisory opinions regarding application of the Commission's open Internet rules. We view these processes as complementary methods by which parties can seek guidance as to how the open Internet rules apply to particular conduct.) We note that in addition to the following list, there may be other considerations relevant to determining whether a particular practice violates the no-unreasonable interference/disadvantage standard. This approach of adopting a rule of general conduct, followed by guidance as to how to apply it on a case-by-case basis, is not novel. The Commission took a similar approach in 2010 when it adopted the ''no unreasonable discrimination'' rule, which was followed by a discussion of four factors (end-user control, use-agnostic discrimination, standard practices, and transparency). Indeed, for this new rule, we are providing at least as much guidance, if not more, as we did in 2010 for the application of the no unreasonable discrimination rule.

139. *End-User Control.* A practice that allows end-user control and is

consistent with promoting consumer choice is less likely to unreasonably interfere with or cause an unreasonable disadvantage affecting the end user's ability to use the Internet as he or she sees fit. The Commission has long recognized that enabling consumer choice is the best path toward ensuring competitive markets, economic growth, and technical innovation. It is therefore critical that consumers' decisions, rather than those of service providers, remain the driving force behind the development of the Internet. To this end, practices that favor end-user control and empower meaningful consumer choice are more likely to satisfy the no-unreasonable interference/disadvantage standard than those that do not. However, as was true in 2010, we are cognizant that user control and network control are not mutually exclusive, and that many practices will fall somewhere on a spectrum from more end-user-controlled to more broadband provider-controlled. Further, there may be practices controlled entirely by broadband providers that nonetheless satisfy the no-unreasonable interference/disadvantage standard. In all events, however, we emphasize that such practices should be fully transparent to the end user and effectively reflect end users' choices.

140. *Competitive Effects.* As the Commission has found previously, broadband providers have incentives to interfere with and disadvantage the operation of third-party Internet-based services that compete with the providers' own services. Practices that have anti-competitive effects in the market for applications, services, content, or devices would likely unreasonably interfere with or unreasonably disadvantage edge providers' ability to reach consumers in ways that would have a dampening effect on innovation, interrupting the virtuous cycle. As such, these anticompetitive practices are likely to harm consumers' and edge providers' ability to use broadband Internet access service to reach one another. Conversely, enhanced competition leads to greater options for consumers in services, applications, content, and devices, and as such, practices that would enhance competition would weigh in favor of promoting consumers' and edge providers' ability to use broadband Internet access service to reach one another. In examining the effect on competition of a given practice, we will also review the extent of an entity's vertical integration as well as its relationships with affiliated entities.

141. *Consumer Protection.* The no-unreasonable interference/disadvantage standard is intended to serve as a strong consumer protection standard. It prohibits broadband providers from employing any deceptive or unfair practice that will unreasonably interfere with or disadvantage end-user consumers' ability to select, access, or use broadband services, applications, or content, so long as the services are lawful, subject to the exception for reasonable network management. For example, unfair or deceptive billing practices, as well as practices that fail to protect the confidentiality of end users' proprietary information, will be unlawful if they unreasonably interfere with or disadvantage end-user consumers' ability to select, access, or use broadband services, applications, or content, so long as the services are lawful, subject to the exception for reasonable network management. While each individual case will be evaluated on its own merits, this rule is intended to include protection against fraudulent practices such as ''cramming'' and ''slamming'' that have long been viewed as unfair and disadvantageous to consumers.

142. *Effect on Innovation, Investment, or Broadband Deployment.* As the *Verizon* court recognized, Internet openness drives a ''virtuous cycle'' in which innovations at the edges of the network enhance consumer demand, leading to expanded investments in broadband infrastructure that, in turn, spark new innovations at the edge. As such, practices that stifle innovation, investment, or broadband deployment would likely unreasonably interfere with or unreasonably disadvantage end users' or edge providers' use of the Internet under the legal standard we set forth today.

143. *Free Expression.* As Congress has recognized, the Internet ''offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.'' Practices that threaten the use of the Internet as a platform for free expression would likely unreasonably interfere with or unreasonably disadvantage consumers' and edge providers' ability to use BIAS to communicate with each other, thereby causing harm to that ability. Further, such practices would dampen consumer demand for broadband services, disrupting the virtuous cycle, and harming end user and edge provider use of the Internet under the legal standard we set forth today. (We also note that the no-unreasonable interference/disadvantage standard does not unconstitutionally burden any of the First Amendment rights held by broadband providers because broadband providers are conduits, not speakers, with respect to broadband Internet access services.)

144. *Application Agnostic.* Application-agnostic (sometimes referred to as use-agnostic) practices likely do not cause an unreasonable interference or an unreasonable disadvantage to end users' or edge providers' ability to use BIAS to communicate with each other. (A network practice is application-agnostic if it does not differentiate in treatment of traffic, or if it differentiates in treatment of traffic without reference to the content, application, or device. A practice is application-specific if it is not application-agnostic. Application-specific network practices include, for example, those applied to traffic that has a particular source or destination, that is generated by a particular application or by an application that belongs to a particular class of applications, that uses a particular application- or transport-layer protocol, or that has particular characteristics (*e.g.,* the size, sequencing, and/or timing of packets). We note, however, that there do exist circumstances where application-agnostic practices raise competitive concerns, and as such may violate our standard to protect the open Internet.) Application-agnostic practices do not interfere with end users' choices about which content, applications, services, or devices to use, nor do they distort competition and unreasonably disadvantage certain edge providers. As such, they likely would not cause harm by unreasonably interfering with or disadvantaging end users or edge providers' ability to communicate using BIAS.

145. *Standard Practices.* In evaluating whether a practice violates our no-unreasonable interference/disadvantage standard to protect Internet openness, we will consider whether a practice conforms to best practices and technical standards adopted by open, broadly representative, and independent Internet engineering, governance initiatives, or standards-setting organization. Consideration of input from technical advisory groups accounts for the important role these organizations have to play in developing communications policy. We make clear, however, that we are not delegating authority to interpret or implement our rules to outside bodies.

b. Application to Mobile

146. As discussed earlier, because of changes that have occurred in the mobile marketplace since 2010, including the widespread deployment of 4G LTE networks and the significant increase in use of mobile broadband Internet access services, we find that it is appropriate to revise our approach for mobile broadband and apply the same openness protections to both fixed and mobile broadband Internet access services, including prohibiting mobile broadband providers from engaging in practices that harm Internet openness. We find that applying the no-unreasonable interference/disadvantage standard to mobile broadband services will help ensure that consumers using mobile broadband services are protected against provider practices that would unreasonably restrict their ability to access a free and open Internet.

147. AT&T, T-Mobile, and Verizon oppose application of a ''commercially reasonable practices'' rule to mobile broadband networks. They argue that competition in the mobile broadband market already ensures that service providers have no incentive to discriminate. CTIA argues that applying a commercial reasonableness standard would deter innovation and limit the ability of providers to differentiate themselves in the marketplace because providers would have to factor in the risk of complaints and investigations. Nokia argues that the Commission should ensure that its rules allow a range of service options. Free State recommends that if the Commission adopts a legally enforceable standard, it should establish a presumption that mobile network management practices benefit consumer welfare and that presumption could only be overcome ''by actual evidence of anticompetitive conduct.''

148. We find that even if the mobile market were sufficiently competitive, competition alone is not sufficient to deter mobile providers from taking actions that would limit Internet openness. As noted above, there have been incidents where mobile providers have acted in a manner inconsistent with open Internet principles and we find that there is a risk that providers will continue to have the incentive to take actions that would favor their own content or services. We also agree with commenters that mobile providers' need for flexibility to manage their network can be accommodated through the reasonable network management exception.

149. In addition, we find that applying the no-unreasonable interference/disadvantage standard to mobile broadband will not affect providers' ability to differentiate themselves in the marketplace. We have crafted the standard we adopt today to prohibit these practices that harm Internet openness while still permitting innovation and experimentation. Nothing in the standard restricts carriers from developing new services or implementing new business models.

c. Rejection of the ''Commercially Reasonable'' Standard

150. Based on the record before us, we are persuaded that adopting a legal standard prohibiting commercially unreasonable practices is not the most effective or appropriate approach for protecting and promoting an open Internet. Internet openness involves many relationships that are not business-to-business and serves many purposes that are noncommercial. (In the data roaming context, two commercial entities deal directly with one another to negotiate a fee-for-service agreement, and there is a direct business relationship with contractual privity and a purely commercial purpose on both sides of the transaction. Open Internet protections, by contrast, apply to a context where there may be no direct negotiation and no direct agreement between key parties. Moreover, while broadband providers are commercial entities with commercial purposes, many of the parties seeking to route traffic to broadband subscribers are not.) Commenters also expressed concerns that the commercially reasonable standard would involve a multifactor framework that was not focused on the goals of this open Internet proceeding. In addition, some commenters expressed concern that the legal standard would require permission before innovation, thus creating higher barriers to entry and attendant transaction costs. Smaller edge providers expressed concern that they do not have the resources to fight against commercially unreasonable practices, which could result in an unfair playing field before the Commission. Still others argued that the standard would permit paid prioritization, which could disadvantage smaller entities and individuals. Given these concerns, we decline to adopt our proposed rule to prohibit practices that are not commercially reasonable. Instead, as discussed above, we adopt a governing standard that looks to whether consumers or edge providers face unreasonable interference or unreasonable disadvantages, and makes clear that the standard is not limited to whether a practice is agreeable to commercial parties.

d. Sponsored Data and Usage Allowances

151. While our bright-line rule to treat paid prioritization arrangements as unlawful addresses technical prioritization, the record reflects mixed views about other practices, including usage allowances and sponsored data plans. Sponsored data plans (sometimes called zero-rating) enable broadband providers to exclude edge provider content from end users' usage allowances. On the one hand, evidence in the record suggests that these business models may in some instances provide benefits to consumers, with particular reference to their use in the provision of mobile services. Service providers contend that these business models increase choice and lower costs for consumers. Commenters also assert that sophisticated approaches to pricing also benefit edge providers by helping them distinguish themselves in the marketplace and tailor their services to consumer demands. Commenters assert that such sponsored data arrangements also support continued investment in broadband infrastructure and promote the virtuous cycle, and that there exist spillover benefits from sponsored data practices that should be considered. On the other hand, some commenters strongly oppose sponsored data plans, arguing that ''the power to exempt selective services from data caps seriously distorts competition, favors companies with the deepest pockets, and prevents consumers from exercising control over what they are able to access on the Internet,'' again with specific reference to mobile services. In addition, some commenters argue that sponsored data plans are a harmful form of discrimination. The record also reflects concerns that such arrangements may hamper innovation and monetize artificial scarcity.

152. We are mindful of the concerns raised in the record that sponsored data plans have the potential to distort competition by allowing service providers to pick and choose among content and application providers to feature on different service plans. At the same time, new service offerings, depending on how they are structured, could benefit consumers and competition. Accordingly, we will look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the

facts of each individual case, and take action as necessary.

153. The record also reflects differing views over some broadband providers' practices with respect to usage allowances (also called ''data caps''). Usage allowances place limits on the volume of data downloaded by the end user during a fixed period. Once a cap has been reached, the speed at which the end user can access the Internet may be reduced to a slower speed, or the end user may be charged for excess data. Usage allowances may benefit consumers by offering them more choices over a greater range of service options, and, for mobile broadband networks, such plans are the industry norm today, in part reflecting the different capacity issues on mobile networks. Conversely, some commenters have expressed concern that such practices can potentially be used by broadband providers to disadvantage competing over-the-top providers. Given the unresolved debate concerning the benefits and drawbacks of data allowances and usage-based pricing plans, (Regarding usage-based pricing plans, there is similar disagreement over whether these practices are beneficial or harmful for promoting an open Internet.) we decline to make blanket findings about these practices and will address concerns under the no-unreasonable interference/disadvantage on a case-by-case basis.

3. Transparency Requirements To Protect and Promote Internet Openness

154. In this section, we adopt enhancements to the existing transparency rule, which covers both content and format of disclosures by providers of broadband Internet access service. As the Commission has previously noted, disclosure requirements are among the least intrusive and most effective regulatory measures at its disposal. We find that the enhanced transparency requirements adopted in the present Order serve the same purposes as those required under the *2010 Open Internet Order:* Providing critical information to serve end-user consumers, edge providers of broadband products and services, and the Internet community. The transparency rule, including the enhancements adopted today, also will aid the Commission in enforcing the other open Internet rules and in ensuring that no service provider can evade them through exploitation of narrowly-drawn exceptions for reasonable network management or through evasion of the scope of our rules.

155. In the *2014 Open Internet NPRM,* we tentatively concluded that we should enhance the existing transparency rule for end users, edge providers, the Internet community, and the Commission to have the information they need to understand the services they receive and to monitor practices that could undermine the open Internet. The NPRM sought comment on a variety of possible enhancements, including whether to require tailored disclosures for specific constituencies (end users, edge providers, the Internet community); ways to make the content and format of disclosures more accessible and understandable to end users; specific changes to disclosures for network practices that would benefit edge providers; whether there are more effective or more comprehensive ways to measure network performance; whether to require providers to disclose meaningful information regarding source, location, speed, packet loss, and duration of congestion; and whether and how any enhancements should apply to mobile broadband providers in a manner different from their application to fixed broadband providers.

156. Based on the record compiled in response to those proposals, below we set forth targeted, incremental enhancements to the existing transparency rule. We first recap the existing transparency rule, which forms the baseline off of which we build today. Having established that baseline, we describe specific enhancements—including refinements and expansions in the required disclosures of commercial terms, performance characteristics, and network practices; adoption of a requirement that broadband providers notify end users directly if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the use of the service. We then address a request to exempt small providers from enhancements to the transparency rule, discuss the relationship of the enhancements to the existing transparency rule, and note the role that we anticipate further guidance from Commission staff will continue to play in applying the transparency rule in practice. Lastly, we adopt a voluntary safe harbor (but not a requirement) for a standalone disclosure format that broadband providers may use in meeting the existing requirement to disclose information that meets the needs of end users.

a. The Existing Transparency Rule

157. The D.C. Circuit in *Verizon* upheld the transparency rule, which remains in full force, applicable to both fixed and mobile providers. In enhancing this rule, we build off of the solid foundation established by the *Open Internet Order.* In that Order, the Commission concluded that effective disclosure of broadband providers' network management practices, performance, and commercial terms of service promotes competition, innovation, investment, end-user choice, and broadband adoption. As a result, the Commission adopted a transparency rule requiring both fixed and mobile providers to ''publicly disclose accurate information regarding the network management practices, performance, and commercial terms'' of their broadband Internet access service. The rule specifies that such disclosures be ''sufficient for consumers to make informed choices regarding the use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.''

158. The *2010 Open Internet Order* went on to provide guidance on both the information to be disclosed and the method of disclosure. Within each category of required disclosure (network management practices, performance characteristics, and commercial terms), the *Open Internet Order* described the type of information to be disclosed. For example, under performance characteristics, the Commission specified, among other things, disclosure of ''expected and actual access speed and latency'' as well as the ''impact of specialized services.'' All disclosures were required to be made ''timely and prominently[,] in plain language accessible to current and prospective end users and edge providers, the Commission, and third parties who wish to monitor network management practices for potential violations of open Internet principles.''

159. In 2011 and 2014, Commission staff provided guidance on interpreting the transparency rule. For example, in addition to other points, the 2011 guidance issued by the Enforcement Bureau and Office of General Counsel (*2011 Advisory Guidance*) described the means by which fixed and mobile broadband providers should meet the requirement to disclose actual performance of the broadband Internet access services they offer and to disclose network management practices, performance, characteristics, and commercial terms ''at the point of sale.'' The *2011 Advisory Guidance* also

clarified the statement in the *Open Internet Order* that effective disclosures ''will likely include some or all of the'' information listed in paragraphs 56 and 98, but also that the list was ''not necessarily exhaustive, nor is it a safe harbor,'' and that ''there may be additional information, not included [in paragraphs 56 and 98], that should be disclosed for a particular broadband service to comply with the rule in light of relevant circumstances.'' Acknowledging the concern of some providers that ''they could be liable for failing to disclose additional types of information that they may not be aware are subject to disclosure,'' the 2011 Advisory Guidance stated that disclosure of the information described in those paragraphs ''will suffice for compliance with the transparency rule at this time.''

160. In an advisory issued in July 2014 (*2014 Advisory Guidance*), the Enforcement Bureau explained that the transparency rule ''prevents a broadband Internet access provider from making assertions about its service that contain errors, are inconsistent with the provider's disclosure statement, or are misleading or deceptive.'' Accurate disclosures ''ensure that consumers—as well as the Commission and the public as a whole—are informed about a broadband Internet access provider's network management practices, performance, and commercial terms.'' As the *2014 Advisory Guidance* recognized, the transparency rule ''can achieve its purpose of sufficiently informing consumers only if advertisements and other public statements that broadband Internet access providers make about their services are accurate and consistent with any official disclosures that providers post on their Web sites or make available in stores or over the phone.'' Thus, ''a provider making an inaccurate assertion about its service performance in an advertisement, where the description is most likely to be seen by consumers, could not defend itself against a transparency rule violation by pointing to an 'accurate' official disclosure in some other public place.'' Allowing such defenses would undermine the core purpose of the transparency rule.

161. Today, we build off of this baseline: The transparency rule requirements established in 2010, and interpreted by the *2011* and *2014 Advisory Guidance.* We also take this opportunity to make two clarifications to the existing rule. First, all of the pieces of information described in paragraphs 56 and 98 of the *Open Internet Order* have been required as part of the current transparency rule, and we will continue to require the information as part of our enhanced rule. The only exception is the requirement to disclose ''typical frequency of congestion,'' which we no longer require since it is superseded by more precise disclosures already required by the rule, such as actual performance. Second, the requirement that *all* disclosures made by a broadband provider be accurate includes the need to maintain the accuracy of these disclosures. Thus, whenever there is a material change in a provider's disclosure of commercial terms, network practices, or performance characteristics, the provider has a duty to update the disclosure in a manner that is ''timely and prominently disclosed in plain language accessible to current and prospective end users and edge providers, the Commission, and third parties who wish to monitor network management practices for potential violations of open Internet principles.'' (We decline, however, to adopt a specific timeframe concerning the updating of disclosures following a material change (*e.g.,* 24 hours).) For these purposes, a ''material'' change is any change that a reasonable consumer or edge provider would consider important to their decisions on their choice of provider, service, or application.

b. Enhancing the Transparency Rule

162. We adopt the tentative conclusion in the *2014 Open Internet NPRM* to enhance the existing transparency rule in certain respects. We conclude that enhancing the existing transparency rule as described below will better enable end-user consumers to make informed choices about broadband services by providing them with timely information tailored more specifically to their needs, and will similarly provide edge providers with the information necessary to develop new content, applications, services, and devices that promote the virtuous cycle of investment and innovation.

(i) Enhancements to Content of Required Disclosures

163. As noted above, the existing transparency rule requires specific disclosures with respect to network practices, performance characteristics, and commercial terms. As we noted in the *2014 Open Internet NPRM,* the Commission has continued to receive numerous complaints from consumers suggesting that broadband providers are not providing information that end users and edge providers need to receive. We noted that consumers continue to express concern that the speed of their service falls short of advertised speeds, that billed amounts are greater than advertised rates, and that consumers are unable to determine the source of slow or congested service. In addition, we noted that end users are often surprised that broadband providers slow or terminate service based on ''excessive use'' or based on other practices, and that consumers report confusion regarding data thresholds or caps. Further, the need for enhanced transparency is bolstered by the needs of certain user groups who rely on broadband as their primary avenue for communications, such as people with disabilities. These enhancements will also serve edge providers. The record supports our conclusions that more specific and detailed disclosures are necessary to ensure that edge providers can ''develop, market, and maintain Internet offerings.'' Such disclosures will also help the wider Internet community monitor provider practices to ensure compliance with our Open Internet rules and providers' own policies.

164. *Commercial Terms.* The existing transparency rule defines the required disclosure of ''commercial terms'' to include pricing, privacy policies, and redress options. While we do not take additional action concerning the requirement to disclose privacy policies and redress options, the record demonstrates need for specific required disclosures about price and related terms. In particular, we specify the disclosures of commercial terms for prices, other fees, and data caps and allowances as follows:

- Price—The full monthly service charge. Any promotional rates should be clearly noted as such, specify the duration of the promotional period, and note the full monthly service charge the consumer will incur after the expiration of the promotional period.
- Other Fees—All additional one time and/or recurring fees and/or surcharges the consumer may incur either to initiate, maintain, or discontinue service, including the name, definition, and cost of each additional fee. (The Commission agrees that the magnitude of these fees bears on consumer decision-making when choosing or switching providers. As a result, the provision of explicit information regarding these fees by providers both promotes competition and assists in consumer decision making.) These may include modem rental fees, installation fees, service charges, and early termination fees, among others.

• Data Caps and Allowances—Any data caps or allowances that are a part of the plan the consumer is purchasing, as well as the consequences of exceeding the cap or allowance (*e.g.,* additional charges, loss of service for the remainder of the billing cycle).

To be clear, these disclosures may have been required in certain circumstances under the existing transparency rule in order to provide information ''sufficient for consumers to make informed choices.'' Here, we now require that this information always be disclosed. In addition, per the current rule, disclosures of commercial terms shall also include the provider's privacy policies (''[f]or example, whether network management practices entail inspection of network traffic, and whether traffic information is stored, provided to third parties, or used by the carrier for non-network management purposes'') and redress options (''practices for resolving end-user and edge provider complaints and questions'').

165. *Performance Characteristics.* The existing transparency rule requires broadband providers to disclose accurate information regarding network performance for each broadband service they offer. This category includes a service description (''[a] general description of the service, including the service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications'') and the impact of specialized services (''[i]f applicable, what specialized services, if any, are offered to end users, and whether and how any specialized services may affect the last-mile capacity available for, and the performance, or broadband Internet access service'').

166. With respect to network performance, we adopt the following enhancements:

• The existing transparency rule requires disclosure of actual network performance. In adopting that requirement, the Commission mentioned speed and latency as two key measures. Today we include packet loss as a necessary part of the network performance disclosure.

• We expect that disclosures to consumers of actual network performance data should be reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service.

• We also expect that network performance will be measured in terms of average performance over a reasonable period of time and during times of peak usage. (We recognize that parties have expressed concern about providing disclosures about network performance on a real-time basis. The enhancements to the transparency rule we adopt today do not include such a requirement. Given that the performance of mobile broadband networks is subject to a greater array of factors than fixed networks, we note that disclosure of a range of speeds may be more appropriate for mobile broadband consumers.)

• We clarify that, for mobile broadband providers, the obligation in the existing transparency rule to disclose network performance information for ''each broadband service'' refers to separate disclosures for services with each technology (*e.g.,* 3G and 4G). Furthermore, with the exception of small providers, mobile broadband providers today can be expected to have access to reliable actual data on performance of their networks representative of the geographic area in which the consumer is purchasing service—through their own or third-party testing—that would be the source of the disclosure. (Per the *2011 Advisory Guidance,* those mobile broadband providers that ''lack reasonable access'' to reliable information on their network performance metrics may disclose a ''Typical Speed Range (TSR)'' to meet the requirement to disclose actual performance. In any event, we expect that mobile broadband providers' disclosure of actual performance data will be based on accepted industry practices and principles of statistical validity.) Commission staff also continue to refine the mobile MBA program, which could at the appropriate time be declared a safe harbor for mobile broadband providers. (Participation in the Measuring Broadband America (MBA) program continues to be a safe harbor for fixed broadband providers in meeting the requirement to disclose actual network performance. The *2011 Advisory Guidance* further stated that fixed providers that choose not to participate in MBA may measure and disclose performance of their broadband offerings using the MBA's methodology, internal testing, consumer speed data, or other data, including reliable, relevant data from third-party sources. Various software-based broadband performance tests are available as potential tools for end users and companies to estimate actual broadband performanceAs noted above, we anticipate that the measurement methodology used for the MBA project will continue to be refined, which in turn will enhance the effectiveness of network performance disclosures generally.)

We decline to otherwise codify specific methodologies for measuring the ''actual performance'' required by the existing transparency rule. We find that, as in 2010, there is benefit in permitting measurement methodologies to evolve and improve over time, with further guidance from Bureaus and Offices—like in 2011—as to acceptable methodologies. (We expect that acceptable methodologies will be grounded in commonly accepted principles of scientific research, good engineering practices, and transparency.) We delegate authority to our Chief Technologist to lead this effort.

167. In addition, the existing rule concerning performance characteristics requires disclosure of the ''impact'' of specialized services, including ''what specialized services, if any, are offered to end users, and ''whether and how any specialized services may affect the last-mile capacity available for, and the performance of, broadband Internet access service.'' As discussed below, today we more properly refer to these services as ''non-BIAS data services.'' Given that the Commission will closely scrutinize offerings of non-BIAS data services and their impact on competition, we clarify that in addition to the requirements of the existing rule concerning what was formerly referred to as ''specialized services,'' disclosure of the impact of non-BIAS data services includes a description of whether the service relies on particular network practices and whether similar functionality is available to applications and services offered over broadband Internet access service.

168. The *2014 Open Internet NPRM* tentatively concluded that we should require that broadband providers disclose meaningful information regarding the source, location, timing, speed, packet loss, and duration of network congestion. As discussed above, we continue to require disclosure of actual network speed and latency (as in 2010), and also require disclosure of packet loss. We decline at this time to require disclosure of the source, location, timing, or duration of network congestion, noting that congestion may originate beyond the broadband provider's network and the limitations of a broadband provider's knowledge of some of these performance characteristics. (Short-term congestion occurs whenever instantaneous demand exceeds capacity. Since demand often consists of the aggregation of a large number of users' traffic, it is technologically difficult to determine

the sources of each component of the aggregate traffic) We also asked whether the Commission should expand its transparency efforts to include measurement of other aspects of service. We decline at this time to require disclosure of packet corruption or jitter, noting that commenters expressed concerns regarding the difficulty of defining metrics for such performance characteristics. (Furthermore, corrupted packets may be included in the packet loss performance characteristic.)

169. *Network Practices.* The existing transparency rule requires disclosure of network practices, including specific disclosures related to congestion management, application-specific behavior, device attachment rules, and security. (Additionally, ''mobile broadband providers should follow the guidance the Commission provided to licensees of the upper 700 MHz C Block spectrum regarding compliance with their disclosure obligations, particularly regarding disclosure to third-party application developers and device manufacturers of criteria and approval procedures (to the extent applicable). For example, these disclosures include, to the extent applicable, establishing a transparent and efficient approval process for third parties, as set forth in section 27.16(d).'' *2010 Open Internet Order* (76 FR 59129–01, 59210, Sept. 23, 2011), 25 FCC Rcd at 17959, para. 98 As discussed above, this information remains part of the transparency rule, with the exception of the requirement to disclose the ''typical frequency of congestion.'') Today, in recognition of significant consumer concerns presented in the record, we further clarify that disclosure of network practices shall include practices that are applied to traffic associated with a particular user or user group, including any application-agnostic degradation of service to a particular end user. (For example, a broadband Internet access service provider may define user groups based on the service plan to which users are subscribed, the volume of data that users send or receive over a specified time period of time or under specific network conditions, or the location of users.) We also clarify that disclosures of user-based or application-based practices should include the purpose of the practice, which users or data plans may be affected, the triggers that activate the use of the practice, the types of traffic that are subject to the practice, and the practice's likely effects on end users' experiences. While some of these disclosures may have been required in certain circumstances under the existing transparency rule, here we clarify that this information should always be disclosed. These disclosures with respect to network practices are necessary: for the public and the Commission to know about the existence of network practices that may be evaluated under the rules, for users to understand when and how practices may affect them, and for edge providers to develop Internet offerings.

170. The *2014 Open Internet NPRM* asked whether we should require disclosures that permit end users to identify application-specific usage or to distinguish which user or device contributed to which part of the total data usage. We decline at this time to require such disclosures, noting that collection of application-specific usage by a broadband provider may require use of deep packet inspection practices that may pose privacy concerns for consumers.

(ii) Enhancements to the Means of Disclosure

171. The existing transparency rule requires, at a minimum, the prominent display of disclosures on a publicly available Web site and disclosure of relevant information at the point of sale. (Broadband providers must actually disclose information required for consumers to make an ''informed choice'' regarding the purchase or use of broadband services at the point of sale. It is not sufficient for broadband providers simply to provide a link to their disclosures.) We enhance the rule to require a mechanism for directly notifying end users if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the end user's use of the service. The purpose of such notification is to provide the affected end users with sufficient information and time to consider adjusting their usage to avoid application of the practice.

(iii) Small Businesses

172. The record reflects the concerns of some commenters that enhanced transparency requirements will be particularly burdensome for smaller providers. ACA, for example, suggests that smaller providers be exempted from the provision of such disclosures. ACA states that its member companies are complying with the current transparency requirements, which ''strike the right balance between edge provider and consumer needs for pertinent information and the need to provide ISPs with some flexibility in how they disclose pertinent information.'' We believe that the transparency enhancements adopted today are modest in nature. For example, we have declined to require certain disclosures proposed in the *2014 Open Internet NPRM* such as the source of congestion, packet corruption, and jitter in recognition of commenter concerns with the benefits and difficulty of making these particular disclosures. We also do not require ''real-time'' disclosures. These proposed disclosures appear to form the bulk of ACA's concerns. Nevertheless, we take seriously the concerns that ACA raises and those of smaller broadband providers generally.

173. Out of an abundance of caution, we grant a temporary exemption for these providers, with the potential for that exemption to become permanent. It is unclear, however, how best to delineate the boundaries of this exception. Clearly, it should include those providers likely to be most disproportionately affected by new disclosure requirements. ACA ''acknowledge[s] that Congress and the Commission have defined 'small' in various ways.'' One metric to which ACA points is the approach that the Commission used in its *2013 Rural Call Completion Order,* which excepted providers with 100,000 or fewer subscriber lines, aggregated across all affiliates, from certain recordkeeping, retention, and reporting rules. We adopt this definition for purposes of the temporary exemption that we adopt today. Accordingly, we hereby adopt a temporary exemption from the enhancements to the transparency rule for those providers of broadband Internet access service (whether fixed or mobile) with 100,000 or fewer broadband subscribers as per their most recent Form 477, aggregated over all the providers' affiliates.

174. Yet we believe that both the appropriateness of the exemption and the threshold require further deliberation. Accordingly, the exemption we adopt is only temporary. We delegate to the Consumer & Governmental Affairs Bureau (CGB) the authority to determine whether to maintain the exemption and, if so, the appropriate threshold for it. We direct CGB to seek comment on the question and to adopt an Order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015. Until such time, notwithstanding any approval received by the Office of Management & Budget for the enhancements adopted today, such enhancements will not apply to providers of broadband Internet access service with 100,000 or fewer subscribers.

175. To be clear, all providers of broadband Internet access service, including small providers, remain subject to the existing transparency rule adopted in 2010. The temporary exemption adopted today, and any permanent exemption adopted by CGB, applies only to the enhanced disclosures described above. As ACA states in its request for an exemption for small providers, ''[i]rrespective of which definition of small that is chosen by the Commission, exempt ISPs would still be required to comply with the transparency requirements contained in section 8.3 of the Commission's rules today.''

(iv) Safe Harbor for Form of Disclosure to Consumers

176. The existing transparency rule requires disclosures sufficient *both* to enable ''consumers to make informed choices regarding use of [broadband] services'' *and* ''content, application, service, and device providers to develop, market, and maintain Internet offerings.'' As in 2010, a central purpose of the transparency rule remains to provide information useful to both constituencies. As we noted in the *2014 Open Internet NPRM,* we are concerned that disclosures are not consistently provided in a manner that adequately satisfies the divergent informational needs of all affected parties. For example, disclosures at times are ill-defined; do not consistently measure service offerings, making comparisons difficult; or are not easily found on provider Web sites. In the *2014 Open Internet NPRM,* we therefore proposed requiring separate disclosure statements to meet both the basic informational needs of consumers and the more technical needs of edge providers.

177. The record reflects concerns, however, as to a requirement to offer tailored disclosures. For example, ACA states that disclosures tailored to edge providers ''would require small ISPs, who manage their own networks and may only have a handful of network operators, engineers, and head end staff to make onerous expenditures of both personnel hours and financial resources.'' Bright House ''question[s] the feasibility of creating disclosures tailored to the varied and potentially unique needs of the hundreds of such providers, particularly with no reciprocal obligation.'' Similarly, Tech Freedom and the International Center for Law and Economics assert that ''requiring ISPs to tailor their disclosures to the various parties the ISPs deal with (*i.e.,* consumers, edge providers, the Internet community, and the FCC) greatly increases the burden of complying with these disclosures, especially as such disclosures must be periodically updated to reflect changes to ISPs' network management practices.'' In light of these concerns, we decline to require separate disclosures at this time.

178. In declining to mandate separate disclosures, however, we do not intend to diminish the existing requirement for disclosure of information sufficient for both end users *and* edge providers. The Commission has not established that a single disclosure would always satisfy the rule; rather, it merely stated broadband providers ''may be able'' to satisfy the transparency rule through a single disclosure. We are especially concerned that in some cases a single disclosure statement may be too detailed and technical to meet the needs of consumers, rather than a separate consumer-focused disclosure. As noted in the *2014 Open Internet NPRM,* both academic research and the Commission's experience with consumer issues have demonstrated that the manner in which providers display information to consumers can have as much impact on consumer decisions as the information itself. A stand-alone format has proven effective in conveying useful information in other contexts. We also note that the OIAC and OTI have proposed the use of a label to disclose the most important information to users of broadband service. In addition, the United Kingdom's largest Internet service providers agreed to produce a comparable table of traffic management information called a Key Facts Indicator.

179. Therefore, we are establishing a voluntary safe harbor for the format and nature of the required disclosure to consumers. To take advantage of the safe harbor, a broadband provider must provide a consumer-focused, standalone disclosure. We decline, however, to mandate the exact format for such disclosures at this time. (We note that although we have sought comment on what format would be most effective, the record is lacking on specific details as to how such a disclosure should be formatted.) Rather, we seek the advice of our Consumer Advisory Committee, which is composed of both industry and consumer interests, including those representing people with disabilities. (The Committee's purpose is to make recommendations to the Commission regarding consumer issues within Commission's jurisdiction and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.) We find that the Committee's experience with consumer disclosure issues (For example, the Committee has studied the value of standardized disclosures and their contents.) makes it an ideal body to recommend a disclosure format that should be clear and easy to read—similar to a nutrition label—to allow consumers to easily compare the services of different providers. We believe the CAC is uniquely able to recommend a disclosure format that both anticipates and addresses provider compliance burdens while ensuring the utility of the disclosures for consumers.

180. We direct the CAC to formulate and submit to the Commission a proposed disclosure format, based on input from a broad range of stakeholders, within six months of the time that its new membership is reconstituted, but, in any event, no later than October 31, 2015. The disclosure format must be accessible to persons with disabilities. We expect that the CAC will consider whether to propose the same or different formats for fixed and mobile broadband providers. In addition, we expect that the CAC will consider whether and how a standard format for mobile broadband providers will allow providers to continue to differentiate their services competitively, as well as how mobile broadband providers can effectively disclose commercial terms to consumers regarding myriad plans in a manner that is not administratively burdensome. The Commission delegates authority to the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Consumer & Governmental Affairs Bureau to issue a Public Notice announcing whether the proposed format or formats meet its expectations for the safe harbor for making consumer-facing disclosures. If the format or formats do not meet such expectations, the Bureaus may ask the CAC to consider changes and submit a revised proposal for the Bureaus' review within 90 days of the Bureaus' request.

181. Broadband providers that voluntarily adopt this format will be presumed to be in compliance with the requirement to make transparency disclosures in a format that meets the needs of consumers. Providers that choose instead to maintain their own format—for example, a unitary disclosure intended both for consumers and edge providers—will bear the burden, if challenged, of explaining how a single disclosure statement meets the needs of both consumers and edge providers. To be clear, use of the consumer disclosure format is a safe

harbor with respect to the format of the required disclosure to consumers. A broadband provider meeting the safe harbor could still be found to be in violation of the rule, for example, if the content of that disclosure (*e.g.,* prices) is misleading or inaccurate, or the provider makes misleading or inaccurate statements in another context, such as advertisements or other statements to consumers. Moreover, broadband providers using the safe harbor should continue to provide the more detailed disclosure statement for the benefit of edge providers.

c. Enforcement and Relationship to the Existing Transparency Rule

182. Despite these enhancements to the existing transparency rule, we clarify that we are being specific in order to provide additional guidance. The transparency rule has always required broadband providers to disclose information ''sufficient for consumers to make informed choices'' (Even where a particular category of information discussed above was not specified in the *2010 Open Internet Order* that does not mean that disclosure of that information has not consistently been required under the transparency rule. If such information is necessary for a consumer to make an ''informed choice'' regarding the purchase or use of broadband service, disclosure of that information is a fundamental requirement of the transparency rule.) and that test could, in particular circumstances, include the enhancements that we expressly adopt today. We also reiterate that under both the existing transparency rule and the enhancements adopted in this Order, all disclosures that broadband providers make about their network practices, performance, and commercial terms of broadband services must be accurate and not misleading.

183. In the *2014 Open Internet NPRM* we also requested comment on how the Commission could best enforce the transparency rule. In particular, we noted that a key objective of the transparency rule is to enable the Commission to collect information necessary to access, report, and enforce the open Internet rules. For example, we sought comment on whether to require broadband providers to certify that they are in compliance with the required disclosures and/or submit reports containing descriptions of current disclosure practices, particularly if the existing flexible approach is amended to require more specific disclosures. Some commenters caution against measures that are unnecessary, susceptible to abuse, or burdensome. Others express support for stronger or more efficient enforcement mechanisms. At this time we decline to require certification by broadband providers. Should evidence be provided, however, that certification is necessary, we will revisit this issue at a later date.

184. We also remind providers that if their disclosure statements fail to meet the requirements established in 2010 and enhanced today, they may be subject to investigation and forfeiture. The Enforcement Bureau will closely scrutinize failure by providers to meet their obligations in fulfilling the transparency rule.

d. Role of Further Advisory Guidance

185. The *2011* and *2014 Advisory Guidance* documents illustrate the role of further guidance from Commission staff in interpreting and applying the general requirements of the transparency rule. We anticipate that as technology, the marketplace, and the needs of consumers, edge providers, and other stakeholders evolve, further such guidance may be appropriate concerning the transparency rule, including with respect to the enhancements adopted today. The most immediate example concerns ongoing improvements and evolutions in the methodologies for measuring broadband providers' actual performance, as discussed in further detail above. We also point out that broadband providers are able to seek advisory opinions from the Enforcement Bureau concerning any of the open Internet regulations, including the transparency rule.

*D. Scope of the Rules*

186. The open Internet rules we adopt today apply to fixed and mobile broadband Internet access service. We make clear, however, that while the definition of broadband Internet access service encompasses arrangements for the exchange of Internet traffic, the open Internet rules we adopt today do not apply to that portion of the broadband Internet access service.

1. Broadband Internet Access Service

187. As discussed below, we continue to define ''broadband Internet access service'' (BIAS) as:

*A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this part.*

188. ''Broadband Internet access service'' continues to include services provided over any technology platform, including but not limited to wire, terrestrial wireless (including fixed and mobile wireless services using licensed or unlicensed spectrum), and satellite. ''Broadband Internet access service'' encompasses all providers of broadband Internet access service, as we delineate them here, regardless of whether they lease or own the facilities used to provide the service. (The Commission has consistently determined that resellers of telecommunications services are telecommunications carriers, even if they do not own any facilities. We note that the rules apply not only to facilities-based providers of broadband service but also to resellers of that service. In applying these obligations to resellers, we recognize, as the Commission has in other contexts, that consumers will expect the protections and benefits afforded by providers' compliance with the rules, regardless of whether the consumer purchase service from a facilities-based provider or a reseller. We note that a reseller's obligation under the rules is independent from the obligation of the facilities-based provider that supplies the underlying service to the reseller, though the extent of compliance by the underlying facilities-based provider will be a factor in assessing compliance by the reseller.) ''Fixed'' broadband Internet access service refers to a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user's home router, computer, or other Internet access device to the network. The term encompasses the delivery of fixed broadband over any medium, including various forms of wired broadband services (*e.g.,* cable, DSL, fiber), fixed wireless broadband services (including fixed services using unlicensed spectrum), and fixed satellite broadband services. ''Mobile'' broadband Internet access service refers to a broadband Internet access service that serves end users primarily using mobile stations. It also includes services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, (We note that ''public safety services,'' as defined in section 337 of the Act, are excluded from the definition of mobile broadband Internet access service.) as well as mobile satellite broadband services. (We provide these definitions of ''fixed'' and ''mobile'' for illustrative purposes. In contrast to the Commission's *2010 Open Internet*

*Order,* here we are applying the same regulations to both fixed and mobile broadband Internet access services.)

189. We continue to define ''mass market'' as ''a service marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries.'' To be clear, ''mass market'' includes broadband Internet access services purchased with support of the E-rate and Rural Healthcare programs, as well as any broadband Internet access service offered using networks supported by the Connect America Fund (CAF). (In the *2010 Open Internet Order,* the Commission found that ''mass market'' included broadband Internet access services purchased with support of the E-rate program. Since that time, the Commission has extended universal service support for broadband services through the Lifeline and Rural Health Care programs. Thus, for the same reasons the Commission defined mass market services to include BIAS purchased with the support of the E-rate program in 2010, we now find that mass market also includes BIAS purchased with the support of Lifeline and Rural Health Care programs.) To the extent that institutions of higher learning purchase mass market services, those institutions would be included within the scope of the schools and libraries portion of our definition. The term ''mass market'' does not include enterprise service offerings, which are typically offered to larger organizations through customized or individually-negotiated arrangements, or special access services.

190. We adopt our tentative conclusion in the *2014 Open Internet NPRM* that broadband Internet access service does not include virtual private network (VPN) services, content delivery networks (CDNs), hosting or data storage services, or Internet backbone services (to the extent those services are separate from broadband Internet access service). The Commission has historically distinguished these services from ''mass market'' services and, as explained in the *2014 Open Internet NPRM,* they ''do not provide the capability to receive data from all or substantially all Internet endpoints.'' We do not disturb that finding here. Likewise, when a user employs, for example, a wireless router or a Wi-Fi hotspot to create a personal Wi-Fi network that is not intentionally offered for the benefit of others, he or she is not providing a broadband Internet access service under our definition.

191. We again decline to apply the open Internet rules to premises operators—such as coffee shops, bookstores, airlines, private end-user networks (*e.g.* libraries and universities), and other businesses that acquire broadband Internet access service from a broadband provider to enable patrons to access the Internet from their respective establishments—to the extent they may be offering broadband Internet access service as we define it today. (While we decline to apply open Internet rules to premises operators to the extent they may offer broadband Internet access service, that decision does not affect other obligations that may apply to premises operators under the Act.) We find, as we did in 2010, that a premises operator that purchases BIAS is an end user and that these services ''are typically offered by the premise operator as an ancillary benefit to patrons.'' Further, applying the open Internet rules to the provision of broadband service by premises operators would have a dampening effect on these entities' ability and incentive to offer these services. As such, we do not apply the open Internet rules adopted today to premises operators. (We reiterate the guidance in the *2010 Open Internet Order* that although not bound by our rules, we encourage premises operators to disclose relevant restrictions on broadband service they make available to their patrons.) The record evinces no significant disagreement with this analysis. (We note, however, that this exception does not affect other obligations that a premise operator may have independent of our open Internet rules.)

192. Our definition of broadband Internet access service includes services ''by wire or radio,'' which encompasses mobile broadband service. Thus, our definition of broadband Internet access service also extends to the same services provided by mobile providers. As discussed above, the record demonstrates the pressing need to apply open Internet rules to fixed and mobile broadband services alike, and changes in the mobile marketplace no longer counsel in favor of treating mobile differently under the rules. Thus, we apply the open Internet rules adopted today to both fixed and mobile networks. (Although we adopt the same rules for both fixed and mobile services, we recognize that with respect to the reasonable network management exception, the rule may apply differently to fixed and mobile broadband providers.)

193. As we discuss more fully below, broadband Internet access service encompasses the exchange of Internet traffic by an edge provider or an intermediary with the broadband provider's network. Below, we find that broadband Internet access service is a telecommunications service, subject to sections 201, 202, and 208 (along with key enforcement provisions). (We note that broadband Internet access services are also subject to sections 222, 224, 225, 254, and 255.) As a result, the Commission will be available to hear disputes regarding arrangements for the exchange of traffic with a broadband Internet access provider raised under sections 201 and 202 on a case-by-case basis: an appropriate vehicle for enforcement where disputes are primarily over commercial terms and that involve some very large corporations, including companies like transit providers and CDNs, that act on behalf of smaller edge providers. However, for reasons discussed more fully below, we exclude this portion of broadband Internet access service—interconnection with a broadband Internet access service provider's network—from application of our open Internet rules. We note that this exclusion also extends to interconnection with CDNs.

2. Internet Traffic Exchange

194. In the *2010 Open Internet Order,* the Commission applied its open Internet rules ''only as far as the limits of a broadband provider's control over the transmission of data to or from its broadband customers,'' and excluded the exchange of traffic between networks from the scope of the rules. In the *2014 Open Internet NPRM,* the Commission tentatively concluded that it should maintain this approach, but explicitly sought comment on suggestions that the Commission should expand the scope of the open Internet rules to cover issues related to Internet traffic exchange. (As a general matter, Internet traffic exchange involves the exchange of IP traffic between networks. An Internet traffic exchange arrangement determines which networks exchange traffic and the destinations to which those networks will deliver that traffic. In aggregate, Internet traffic exchange arrangements allow an end user of the Internet to interact with other end users on other Internet networks, including content or services that make themselves available by having a public IP address, similar to how the global public switched telephone network consists of networks that route calls based on telephone numbers. When we adopted the *2014 Open Internet NPRM,* the Chairman issued a separate, written statement suggesting that ''the question of interconnection ('peering') between the

consumer's network provider and the various networks that deliver to that ISP . . . is a different matter that is better addressed separately.'' *2014 Open Internet NPRM,* 29 FCC Rcd at 5647. While this statement reflected the Notice's tentative conclusion concerning Internet traffic exchange, it in no way detracts from the fact that the Notice also sought comment on ''whether we should change our conclusion,'' whether to adopt proposals to ''expand the scope of the open Internet rules to cover issues related to traffic exchange,'' and how to ''ensure that a broadband provider would not be able to evade our open Internet rules by engaging in traffic exchange practices that would be outside the scope of the rules as proposed.'')

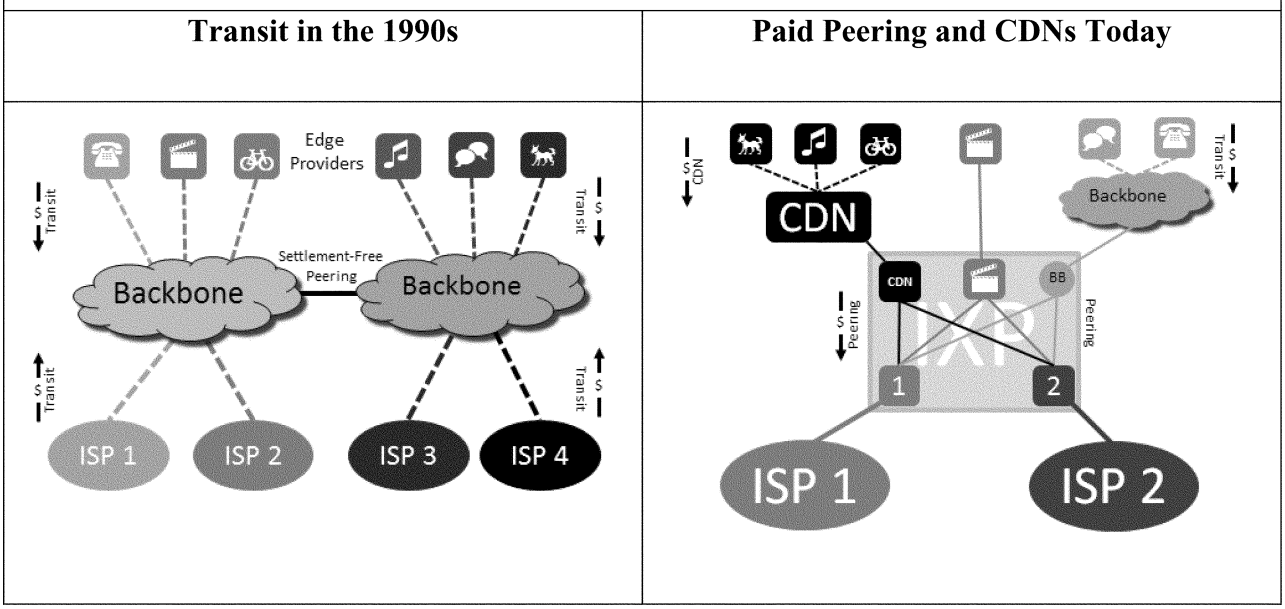
195. As discussed below, we classify fixed and mobile broadband Internet access service as telecommunications services. The definition for broadband Internet access service includes the exchange of Internet traffic by an edge provider or an intermediary with the broadband provider's network. We note that anticompetitive and discriminatory practices in this portion of broadband Internet access service can have a deleterious effect on the open Internet, and therefore retain targeted authority to protect against such practices through sections 201, 202, and 208 of the Act (and related enforcement provisions), but will forbear from a majority of the other provisions of the Act. Thus, we conclude that, at this time, application of the no-unreasonable interference/disadvantage standard and the prohibitions on blocking, throttling, and paid prioritization to the Internet traffic exchange arrangements is not warranted.

196. *Trends in Internet Traffic Exchange.* Internet traffic exchange is typically based on commercial negotiations. Changes in consumer behavior, traffic volume, and traffic composition have resulted in new business models for interconnection. Since broadband Internet access service providers cannot, on their own, connect to every end point on the Internet in order to provide full Internet access to their customers, they historically paid third-party backbone service providers for transit. Backbone service providers interconnected upstream until traffic reached Tier 1 backbone service providers, which peered with each other and thereby provided their customer networks with access to the full Internet. In this hierarchical arrangement of networks, broadband Internet access providers negotiated with backbone service providers; broadband Internet access providers generally did not negotiate with edge providers to gain access to content. However, in recent years, new business models of Internet traffic exchange have emerged, premised on changes in traffic flows and in broadband Internet access provider networks. A number of factors drive these trends in Internet traffic exchange.

197. Critically, the growth of online streaming video services has sparked further evolution of the Internet. Content providers have come to rely on the services of commercial and private CDNs, which cache content close to end users, providing increased quality of service and avoiding transit costs. While CDNs rely on transit to feed the array of CDN cache servers, they deliver traffic to broadband Internet access service providers via transit service or by entering into peering arrangements, directly interconnecting with broadband Internet access service providers.

198. In addition, several large broadband Internet access service providers, such as AT&T, Comcast, Time Warner Cable, and Verizon, have built or purchased their own backbones, giving them the ability to directly interconnect with other networks and edge providers and thereby lowering and eliminating payments to third-party transit providers. These interconnection arrangements are ''peering,'' involving the exchange of traffic only between the two networks and their customers, rather than paid transit, which provides access to the full Internet over a single interconnection. Peering gives the participants greater control over their traffic and any issues arising with the traffic exchange are limited to those parties, and not other parties over other interconnection links. Historically, broadband Internet access service providers paid for transit and therefore had an incentive to agree to settlement-free peering with a CDN to reduce transit costs; however, where large broadband Internet access service providers have their own national backbones and have settlement-free peering with other backbones, they may no longer have an incentive to agree to settlement-free peering with CDNs in order to avoid transit costs. As shown below in Chart 1, the evolution from reliance on transit to peering arrangements also means an evolution from a traffic exchange arrangement that provides access to the full Internet to a traffic exchange arrangement that only provides for the exchange of traffic from a specific network provider and its customers.

**Chart 1: Evolution in Transit Market**




199. *Recent Disputes.* Recently, Internet traffic exchange disputes have reportedly involved not de-peering, as was more frequently the case in the last decade, but rather degraded experiences caused by congested ports between providers. In addition, these disputes have evolved from conflicts that may last a few days, to disputes that have been sustained for well over a year, and have gone from disputes between backbone service networks, to disputes between providers of broadband Internet access service and transit service providers, CDNs, or edge providers. The typical dispute has involved, on one side, a large broadband provider, and on the other side, a commercial transit provider (such as Cogent or Level 3) and/or a large CDN. Multiple parties point out, however, that interconnection problems can harm more than just the parties in a dispute. When links are congested and capacity is not augmented, the networks—and applications, large and small, running over the congested links into and out of those networks—experience degraded quality of service due to reduced throughput, increased packet loss, increased delay, and increased jitter. At the end of the day, consumers bear the harm when they experience degraded access to the applications and services of their choosing due to a dispute between a large broadband provider and an interconnecting party. Parties also assert that these disputes raise concerns about public safety and network reliability. To address these growing concerns, a number of parties have called for extending the rules proposed in the *2014 Open Internet NPRM* to Internet traffic exchange practices.

200. The record reflects competing narratives. Some edge and transit providers assert that large broadband Internet access service providers are creating artificial congestion by refusing to upgrade interconnection capacity at their network entrance points for settlement-free peers or CDNs, thus forcing edge providers and CDNs to agree to paid peering arrangements. These parties suggest that paid arrangements resulting from artificially congested interconnection ports at the broadband Internet access service provider network edge could create the same consumer harms as paid arrangements in the last-mile, and lead to paid prioritization, fast lanes, degradation of consumer connections, and ultimately, stifling of innovation by edge providers. Further, edge providers argue that they are covering the costs of carrying this traffic through the network, bringing it to the gateway of the Internet access service, unlike in the past where both parties covered their own costs to reach the Tier 1 backbones where traffic would then be exchanged on a settlement-free basis. Edge and transit providers argue that the costs of adding interconnection capacity or directly connecting with edge providers are *de minimis.* Further, they assert that traffic ratios ''are arbitrarily set and enforced and are not reflective of how [broadband providers] sell broadband connections and how consumers use them.'' Thus, these edge and transit providers assert that a focus on only the last-mile portion of the Internet traffic path will fail to adequately constrain the potential for anticompetitive behavior on the part of broadband Internet access service providers that serve as gatekeepers to the edge providers, transit providers, and CDNs seeking to deliver Internet traffic to the broadband providers' end users.

201. In contrast, large broadband Internet access service providers assert that edge providers such as Netflix are imposing a cost on broadband Internet access service providers who must constantly upgrade infrastructure to keep up with the demand. Large broadband Internet access service providers explain that when an edge provider sends extremely large volumes of traffic to a broadband Internet access service provider—*e.g.*, through a CDN or a third-party transit service provider—the broadband provider must invest in additional interconnection capacity (*e.g.*, new routers or ports on existing routers) and middle-mile transport capacity in order to accommodate that traffic, exclusive of ''last-mile'' costs from the broadband Internet access provider's central offices, head ends, or cell sites to end-user locations. Commenters assert that if the broadband Internet access service provider absorbs these interconnection and transport costs, *all* of the broadband provider's subscribers will see their bills rise. They argue that this is unfair to subscribers who do not use the services, like Netflix, that are driving the need for additional capacity. Broadband Internet

access service providers explain that settlement-free peering fundamentally is a barter arrangement in which each side receives something of value. These parties contend that if the other party is only sending traffic, it is not contributing something of value to the broadband Internet access service provider.

202. *Mechanism to Resolve Traffic Exchange Disputes.* As discussed, Internet traffic exchange agreements have historically been and will continue to be commercially negotiated. We do not believe that it is appropriate or necessary to subject arrangements for Internet traffic exchange (which are subsumed within broadband Internet access service) to the rules we adopt today. We conclude that it would be premature to adopt prescriptive rules to address any problems that have arisen or may arise. (We decline to adopt these and similar types of proposals for the same reasons we decline to apply the open Internet rules to traffic exchange.) It is also premature to draw policy conclusions concerning new paid Internet traffic exchange arrangements between broadband Internet access service providers and edge providers, CDNs, or backbone services. (For instance, Akamai expresses concern that adoption of rules governing interconnection could be used as a justification by some broadband providers to refuse direct interconnection to CDNs and other content providers generally, on the theory that connecting with *any* CDN necessitates connecting with *all* CDNs, regardless of technical feasibility. We do not intend such a result by our decision today to assert authority over interconnection.) While the substantial experience the Commission has had over the last decade with ''last-mile'' conduct gives us the understanding necessary to craft specific rules based on assessments of potential harms, we lack that background in practices addressing Internet traffic exchange. For this reason, we adopt a case-by-case approach, which will provide the Commission with greater experience. Thus, we will continue to monitor traffic exchange and developments in this market.

203. At this time, we believe that a case-by-case approach is appropriate regarding Internet traffic exchange arrangements between broadband Internet access service providers and edge providers or intermediaries—an area that historically has functioned without significant Commission oversight. (We note, however, that the Commission has looked at traffic exchange in the context of mergers and, sometimes imposed conditions on traffic exchange.) Given the constantly evolving market for Internet traffic exchange, we conclude that at this time it would be difficult to predict what new arrangements will arise to serve consumers' and edge providers' needs going forward, as usage patterns, content offerings, and capacity requirements continue to evolve. Thus, we will rely on the regulatory backstop prohibiting common carriers from engaging in unjust and unreasonable practices. Our ''light touch'' approach does not directly regulate interconnection practices. Of course, this regulatory backstop is not a substitute for robust competition. The Commission's regulatory and enforcement oversight, including over common carriers, is complementary to vigorous antitrust enforcement. Indeed, mobile voice services have long been subject to Title II's just and reasonable standard and both the Commission and the Antitrust Division of the Department of Justice have repeatedly reviewed mergers in the wireless industry. Thus, it will remain essential for the Commission, as well as the Department of Justice, to continue to carefully monitor, review, and where appropriate, take action against any anti-competitive mergers, acquisitions, agreements or conduct, including where broadband Internet access services are concerned.

204. Broadband Internet access service involves the exchange of traffic between a last-mile broadband provider and connecting networks. (We disagree with commenters who argue that arrangements for Internet traffic exchange are private carriage arrangements, and thus not subject to Title II. As we explain below in today's Declaratory Ruling, Internet traffic exchange is a component of broadband Internet access service, which meets the definition of ''telecommunications service.'') The representation to retail customers that they will be able to reach ''all or substantially all Internet endpoints'' necessarily includes the promise to make the interconnection arrangements necessary to allow that access. As a telecommunications service, broadband Internet access service implicitly includes an assertion that the broadband provider will make just and reasonable efforts to transmit and deliver its customers' traffic to and from ''all or substantially all Internet endpoints'' under sections 201 and 202 of the Act. In any event, BIAS provider practices with respect to such arrangements are plainly ''for and in connection with'' the BIAS service. Thus, disputes involving a provider of broadband Internet access service regarding Internet traffic exchange arrangements that interfere with the delivery of a broadband Internet access service end user's traffic are subject to our authority under Title II of the Act. (We note that the Commission has forborne from application of many of the requirements of Title II to broadband Internet access service.)

205. We conclude that our actions regarding Internet traffic exchange arrangements are reasonable based on the record before us, which demonstrates that broadband Internet access providers have the ability to use terms of interconnection to disadvantage edge providers and that consumers' ability to respond to unjust or unreasonable broadband provider practices are limited by switching costs. These findings are limited to the broadband Internet access services we address today. (We observe that should a complaint arise regarding BIAS provider Internet traffic exchange practices, practices by edge providers (and their intermediaries) would be considered as part of the Commission's evaluation as to whether BIAS provider practices were ''just and reasonable'' under the Act.) When Internet traffic exchange breaks down—regardless of the cause—it risks preventing consumers from reaching the services and applications of their choosing, disrupting the virtuous cycle. We recognize the importance of timely review in the midst of commercial disputes. The Commission will be available to hear disputes raised under sections 201 and 202 on a case-by-case basis. We believe this is an appropriate vehicle for enforcement where disputes are primarily between sophisticated entities over commercial terms and that include companies, like transit providers and CDNs, that act on behalf of smaller edge providers. We also observe that section 706 provides the Commission with an additional, complementary source of authority to ensure that Internet traffic exchange practices do not harm the open Internet. As explained above, we have decided not to adopt specific regulations that would detail the practices that would constitute circumvention of the open Internet regulations we adopt today. Instead, and in a manner similar to our treatment of non-BIAS services, we will continue to monitor Internet traffic exchange arrangements and have the authority to intervene to ensure that they are not harming or threatening to harm the open nature of the Internet.

206. The record also reflects a concern that our decision to adopt this regulatory backstop violates the

Administrative Procedure Act. (Verizon claims that ''in light of the Commission's past statements on interconnection, to suddenly regulate [interconnection] agreements for the first time in a final rule in this proceeding would violate the notice and comment requirements of the Administrative Procedure Act'' and that even issuing a Further Notice of Proposed Rulemaking would not allow the Commission to impose Title II regulations on interconnection services. The dissenting statements likewise assert that the *2014 Open Internet NPRM* did not provide notice of the possibility that the Commission would assert authority over interconnection.) We disagree. To be clear, consistent with the NPRM's proposal, we are not applying the open Internet rules we adopt today to Internet traffic exchange. Rather, certain regulatory consequences flow from the Commission's classification of BIAS, including the traffic exchange component, as falling within the ''telecommunications services'' definition in the Act. In all events, the *2014 Open Internet NPRM* provided clear notice about the possibility of expanding the scope of the open Internet rules to cover issues related to traffic exchange. (Section 553 provides that ''[g]eneral notice of proposed rulemaking shall be published in the **Federal Register**,'' and that ''[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making'' through submission of comments. 5 U.S.C. 553(b), (c). The Commission published the *NPRM* in the **Federal Register** at 79 FR 37448, July 1, 2014. It also made clear that the Commission was considering whether to reclassify retail broadband services. In addition, the *2014 Open Internet NPRM* asked: ''How can we ensure that a broadband provider would not be able to evade our open Internet rules by engaging in traffic exchange practices that would be outside the scope of the rules as proposed?'' As discussed above, our assertion of authority over Internet traffic exchange practices addresses that question by providing us with the necessary case-by-case enforcement tools to identify practices that may constitute such evasion and address them. Further, to the extent that any doubts remain about whether the *2014 Open Internet NPRM* provided sufficient notice, the approach adopted today is also a logical outgrowth of the original proposal included in the *2014 Open Internet NPRM.* The numerous submissions in the record at every stage of the proceeding seeking to influence the Commission in its decision to adopt policies regulating Internet traffic exchange illustrate that the Commission not only gave interested parties adequate notice of the possibility of a rule, but that parties considered Commission action on that proposal a real possibility.

3. Non-BIAS Data Services

207. In the *2014 Open Internet NPRM,* the Commission tentatively concluded that it should not apply its conduct-based rules to services offered by broadband providers that share capacity with broadband Internet access service over providers' last-mile facilities, while closely monitoring the development of these services to ensure that broadband providers are not circumventing the open Internet rules. After reviewing the record, we believe the best approach is to adopt this tentative conclusion to permit broadband providers to offer these types of services while continuing to closely monitor their development and use. While the *2010 Open Internet Order* and the *2014 Open Internet NPRM* used the term ''specialized services'' to refer to these types of services, the term ''non-BIAS data services'' is a more accurate description for this class of services. While the services discussed below are not broadband Internet access service, and thus the rules we adopt do not apply to these services, we emphasize that we will act decisively in the event that a broadband provider attempts to evade open Internet protections (*e.g.,* by claiming that a service that is the equivalent of Internet access is a non-BIAS data service not subject to the rules we adopt today).

208. We provide the following examples of services and characteristics of those services that, at this time, likely fit within the category of services that are not subject to our conduct-based rules. As indicated in the *2010 Open Internet Order,* some broadband providers' existing facilities-based VoIP and Internet Protocol-video offerings would be considered non-BIAS data services under our rules. Further, the *2010 Open Internet Order* also noted that connectivity bundled with e-readers, heart monitors, or energy consumption sensors would also be considered other data services to the extent these services are provided by broadband providers over last-mile capacity shared with broadband Internet access service. Additional examples of non-BIAS data services may include limited-purpose devices such as automobile telematics, and services that provide schools with curriculum-approved applications and content.

209. These services may generally share the following characteristics identified by the Open Internet Advisory Committee. First, these services are not used to reach large parts of the Internet. Second, these services are not a generic platform—but rather a specific ''application level'' service. And third, these services use some form of network management to isolate the capacity used by these services from that used by broadband Internet access services.

210. We note, however, that non-BIAS data services may still be subject to enforcement action. Similar to the Commission's approach in 2010, if the Commission determines that a particular service is ''providing a functional equivalent of broadband Internet access service, or . . . is [being] used to evade the protections set forth in these rules,'' we will take appropriate enforcement action. Further, if the Commission determines that these types of service offerings are undermining investment, innovation, competition, and end-user benefits, we will similarly take appropriate action. We are especially concerned that over-the-top services offered over the Internet are not impeded in their ability to compete with other data services. (Further, we anticipate that consumers of competing over-the-top services will not be disadvantaged in their ability to access 911 service.)

211. The record overwhelmingly supports our decision to continue treating non-BIAS data services differently than broadband Internet access service under the open Internet rules. This approach will continue to drive additional investment in broadband networks and provide end users with valued services without otherwise constraining innovation. Further, as noted by numerous commenters, since other data services were permitted in the *2010 Open Internet Order,* we have seen little resulting evidence of broadband providers using these services to undermine the 2010 rules.

212. Nevertheless, non-BIAS data services still could be used to evade the open Internet rules. Due to these concerns, we will continue to monitor the market for non-BIAS data services to ensure that these services are not causing or threatening to cause harm to the open nature of the Internet. Since the *2010 Open Internet Order,* broadband Internet access providers have been required to disclose the impact of non-BIAS data services on the performance of and the capacity available for broadband Internet access services. As discussed in detail above,

we will continue to monitor the existence and effects of non-BIAS data services under the broadband providers' transparency obligations.

213. We disagree with commenters who argue that the Commission should adopt a more-detailed definition for non-BIAS data services to safeguard against any such circumvention of the rules. Several commenters provided definitions of what they believe should constitute non-BIAS data services. Others, however, expressed concerns that a formal definition of non-BIAS data services risks potentially limiting future innovation and investment, ultimately negatively impacting consumer welfare. We share these concerns and thus decline to further define what constitutes ''non-BIAS data services'' or adopt additional policies specific to such services at this time. Again, however, we will closely monitor the development and use of non-BIAS data services and have authority to intervene if these services are utilized in a manner that harms the open Internet.

4. Reasonable Network Management

214. The *2014 Open Internet NPRM* proposed to retain a reasonable network management exception to the conduct-based open Internet rules, following the approach adopted in the *2010 Open Internet Order* that permitted exceptions for ''reasonable network management'' practices to the no-blocking and no unreasonable discrimination rules. The *2014 Open Internet NPRM* also tentatively concluded that the Commission should retain the definition of reasonable network management adopted as part of the 2010 rules that ''[a] network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.''

215. The record broadly supports maintaining an exception for reasonable network management. We agree that a network management exception to the no-blocking rule, the no-throttling rule, and the no-unreasonable interference/disadvantage standard is necessary for broadband providers to optimize overall network performance and maintain a consistent quality experience for consumers while carrying a variety of traffic over their networks. (As discussed above, the transparency rule does not include an exception for reasonable network management. We clarify, however, that the transparency rule ''does not require public disclosure of competitively sensitive information or information that would compromise network security or undermine the efficacy of reasonable network management practices.'') Therefore, the no-blocking rule, the no-throttling rule, and the no-unreasonable interference/disadvantage standard will be subject to reasonable network management for both fixed and mobile providers of broadband Internet access service. In addition to retaining the exception, we retain the definition of reasonable network management with slight modifications:

*A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.*

216. For a practice to even be considered under this exception, a broadband Internet access service provider must first show that the practice is primarily motivated by a technical network management justification rather than other business justifications. If a practice is primarily motivated by such an other justification, such as a practice that permits different levels of network access for similarly situated users based solely on the particular plan to which the user has subscribed, then that practice will not be considered under this exception. The term ''particular network architecture and technology'' refers to the differences across broadband access platforms of any kind, including cable, fiber, DSL, satellite, unlicensed Wi-Fi, fixed wireless, and mobile wireless.

217. As noted above, reasonable network management is an exception to the no-blocking rule, no-throttling rule, and no-unreasonable interference/disadvantage standard, but not to the rule against paid prioritization. (Paid prioritization would be evaluated under the standards set forth in section II.C.1.c *supra)* This is because unlike conduct implicating the no-blocking, no-throttling, or no-unreasonable interference/disadvantage standard, paid prioritization is not a network management practice because it does not primarily have a technical network management purpose. (For purposes of the open Internet rules, prioritization of affiliated content, applications, or services is also considered a form of paid prioritization.) When considering whether a practice violates the no-blocking rule, no-throttling rule, or no-unreasonable interference/disadvantage standard, the Commission may first evaluate whether a practice falls within the exception for reasonable network management.

218. *Evaluating Network Management Practices.* The *2014 Open Internet NPRM* proposed that the Commission adopt the same approach for determining the scope of network management practices considered to be reasonable as adopted in the *2010 Open Internet Order.* (The Commission decided to determine the scope of reasonable network management on a case-by-case basis in the *Open Internet Order* and we maintain those same factors today.) We recognize the need to ensure that the reasonable network management exception will not be used to circumvent the open Internet rules while still allowing broadband providers flexibility to experiment and innovate as they reasonably manage their networks. We therefore elect to maintain a case-by-case approach. The case-by-case review also allows sufficient flexibility to address mobile-specific management practices because, by the terms of our rule, a determination of whether a network management practice is reasonable takes into account the particular network architecture and technology. We also note that our transparency rule requires disclosures that provide an important mechanism for monitoring whether providers are inappropriately exploiting the exception for reasonable network management.

219. To provide greater clarity and further inform the Commission's case-by-case analysis, we offer the following guidance regarding legitimate network management purposes. We also note that, similar to the 2010 reasonable network management exception, broadband providers may request a declaratory ruling or an advisory opinion from the Commission before deploying a network management practice, but are not required to do so.

220. As with the network management exception in the *2010 Open Internet Order,* broadband providers may implement network management practices that are primarily used for, and tailored to, ensuring network security and integrity, including by addressing traffic that is harmful to the network, such as traffic that constitutes a denial-of-service attack on specific network infrastructure elements. Likewise, broadband providers may also implement network management practices that are primarily used for, and tailored to, addressing traffic that is unwanted by end users. Further, we reiterate the guidance of the *2010 Open Internet Order* that network management practices that alleviate congestion without regard to the source, destination, content, application, or

service are also more likely to be considered reasonable network management practices in the context of this exception. (As in the no throttling rule and the no unreasonable interference or unreasonable disadvantage standard, we include classes of content, applications, services, or devices.) In evaluating congestion management practices, a subset of network management practices, we will also consider whether the practice is triggered only during times of congestion and whether it is based on a user's demand during the period of congestion.

221. We also recognize that some network management practices may have a legitimate network management purpose, but also may be exploited by a broadband provider. We maintain the guidance underlying the *2010 Open Internet Order*'s case-by-case analysis that a network management practice is more likely to be found reasonable if it is transparent, and either allows the end user to control it or is application-agnostic.

222. As in 2010, we decline to adopt a more detailed definition of reasonable network management. For example, one proposal suggests that the Commission limit the circumstances in which network management techniques can be used so they would only be reasonable if they were used temporarily, for exceptional circumstances, and have a proportionate impact to solve a targeted problem. We acknowledge the advantages a more detailed definition of network management can have on long-term network investment and transparency, but at this point, there is not a need to place such proscriptive limits on broadband providers. (While some commenters note that there have not been any major technological changes in how broadband providers manage traffic since 2010, others indicate that broadband providers have acquired additional techniques that allow them to manage traffic in real-time.) Furthermore, a more detailed definition of reasonable network management risks quickly becoming outdated as technology evolves. Case-by-case analysis will allow the Commission to use the conduct-based rules adopted today to take action against practices that are known to harm consumers without interfering with broadband providers' beneficial network management practices. (Beneficial practices include protecting their Internet access services against malicious content or offering a service limited to offering ''family friendly'' materials to end users who desire only such content.)

223. We believe that the reasonable network management exception provides both fixed and mobile broadband providers sufficient flexibility to manage their networks. We recognize, consistent with the consensus in the record, that the additional challenges involved in mobile broadband network management mean that mobile broadband providers may have a greater need to apply network management practices, including mobile-specific network management practices, and to do so more often to balance supply and demand while accommodating mobility. As the Commission observed in 2010, mobile network management practices must address dynamic conditions that fixed, wired networks typically do not, such as the changing location of users as well as other factors affecting signal quality. The ability to address these dynamic conditions in mobile network management is especially important given capacity constraints many mobile broadband providers face. Moreover, notwithstanding any limitations on mobile network management practices necessary to protect the open Internet, we anticipate that mobile broadband providers will continue to be able to use a multitude of tools to manage their networks, including an increased number of network management tools available in 4G LTE networks.

224. We note in a similar vein that providers relying on unlicensed Wi-Fi networks have specific network management needs. For example, these providers can ''face spectrum constraints and congestion issues that can pose particular network-management challenges'' and also ''must accept and manage interference from other users in the unlicensed bands.'' Again, the Commission will take into account when and how network management measures are applied as well as the particular network architecture and technology of the broadband Internet access service in question, in determining if a network management practice is reasonable. For these reasons, we reject the argument that rules with exceptions only for *reasonable* network management practices would ''tie the hands of operators and make it more challenging to meet consumers' needs'' or that ''the mere threat of *post hoc* regulatory review . . . would disrupt and could chill optimal network management practices.'' In recognizing the unique challenges, network architecture, and network management of mobile broadband networks (and others, such as unlicensed Wi-Fi networks), we conclude that the reasonable network management exception addresses this concern and strikes an appropriate balance between the need for flexibility and ensuring the Commission has the tools necessary to maintain Internet openness.

### *E. Enforcement of the Open Internet Rules*

#### 1. Background

225. Timely and effective enforcement of the rules we adopt in this Order is crucial to preserving an open Internet, enhancing competition and innovation, and providing clear guidance to consumers and other stakeholders. As has been the case since we adopted our original open Internet rules in 2010, we anticipate that many disputes that will arise can and should be resolved by the parties without Commission involvement. We encourage parties to resolve disputes through informal discussions and private negotiations whenever possible. To the extent disputes are not resolved, the Commission will continue to provide backstop mechanisms to address them. We also will proactively monitor compliance and take strong enforcement action against parties who violate the open Internet rules.

226. In the *2010 Open Internet Order,* the Commission established a two-tiered framework for enforcing open Internet rules. The Commission allowed parties to file informal complaints pursuant to section 1.41 of our rules and promulgated new procedures to govern formal complaints alleging violations of the open Internet rules. This framework was not affected by the D.C. Circuit's decision in *Verizon.* It therefore remains in effect and will apply to complaints regarding the rules we adopt in this Order. Informal complaints provide end users, edge providers, and others with a simple and efficient vehicle for bringing potential open Internet violations to the attention of the Commission. The formal complaint rules permit any person to file a complaint with the Commission alleging an open Internet rule violation and to participate in an adjudicatory proceeding to resolve the complaint. In addition to these mechanisms for resolving open Internet complaints, the Commission continuously monitors press reports and other public information, which may lead the Enforcement Bureau to initiate an investigation of potential open Internet rule violations.

227. In the *2014 Open Internet NPRM,* the Commission sought comment on the efficiency and functionality of the complaint processes adopted in the

*2010 Open Internet Order* and on mechanisms we should consider to improve enforcement and dispute resolution. We tentatively concluded that our open Internet rules should include at least three fundamental elements: (1) Legal certainty, so that broadband providers, edge providers, and end users can plan their activities based on clear Commission guidance; (2) flexibility to consider the totality of the facts in an environment of dynamic innovation; and (3) effective access to dispute resolution. We affirm the importance of these principles below and discuss several enhancements to our existing open Internet complaint rules to advance them. In addition, we adopt changes to our complaint processes to ensure that they are accessible and user-friendly to consumers, small businesses, and other interested parties, as well as changes to ensure that that our review of complaints is inclusive and informed by groups with relevant technical or other expertise.

2. Designing an Effective Enforcement Process

a. Legal Certainty

228. We sought comment in the *2014 Open Internet NPRM* on ways to design an effective enforcement process that provides legal certainty and predictability to the marketplace. In addition to our current complaint resolution framework, we requested input on what other forms of guidance would be helpful. We solicited feedback on whether the Commission should: (1) Establish an advisory opinion process, akin to ''business review letters'' issued by the Department of Justice (DOJ), and/or non-binding staff opinions, through which parties could ask the Commission for a statement of its current enforcement intentions with respect to certain practices under the new rules; and (2) publish enforcement advisories that provide additional insight into the application of the rules. Many commenters recognized the benefits of clear rules and greater predictability regarding open Internet protections.

(i) Advisory Opinions

229. We conclude that use of advisory opinions similar to those issued by DOJ's Antitrust Division is in the public interest and would advance the Commission's goal of providing legal certainty. (We decline to adopt non-binding staff opinions in light of our decision to establish an advisory opinion process similar to the DOJ Antitrust Division's business review letter approach, as well as existing voluntary mediation processes to resolve open Internet disputes that are available through the Enforcement Bureau's Market Disputes and Resolutions Division.) Although the Commission historically has not used advisory opinions to promote compliance with our rules, we conclude that they have the potential to serve as useful tools to provide clarity, guidance, and predictability concerning the open Internet rules. (Parties also have the option to file a petition for declaratory ruling under section 1.2 of the Commission's rules, 47 CFR 1.2. In contrast to declaratory rulings, advisory opinions may only relate to prospective conduct, and the Enforcement Bureau will not seek comment on advisory opinions via public notice.) Advisory opinions will enable companies to seek guidance on the propriety of certain open Internet practices before implementing them, enabling them to be proactive about compliance and avoid enforcement actions later. The Commission may use advisory opinions to explain how it will evaluate certain types of behavior and the factors that will be considered in determining whether open Internet violations have occurred. Because these opinions will be publicly available, we believe that they will reduce the number of disputes by providing guidance to the industry.

230. In this Order, we adopt rules promulgating basic requirements for obtaining advisory opinions, as well as limitations on their issuance. Any entity that is subject to the Commission's jurisdiction may request an advisory opinion regarding its own proposed conduct that may implicate the rules we adopt in this Order, the rules that remain in effect from the *2010 Open Internet Order,* or any other rules or policies related to the open Internet that may be adopted in the future.

231. Requests for advisory opinions may be filed via the Commission's Web site or with the Office of the Secretary and must be copied to the Commission staff specified in the rules. We delegate authority to issue advisory opinions to the Enforcement Bureau, which will coordinate with other Bureaus and Offices on the issuance of opinions. The Enforcement Bureau will have discretion to choose whether it will respond to the request. If the Bureau declines to respond to a request, it will inform the requesting party in writing. As a general matter, the Bureau will be more likely to respond to requests where the proposed conduct involves a substantial question of fact or law and there is no clear Commission or court precedent, or the subject matter of the request and consequent publication of Commission advice is of significant public interest. In addition, the Bureau will decline to respond to requests if the same conduct is the subject of a current government investigation or proceeding, including any ongoing litigation or open rulemaking.

232. Requests for advisory opinions must relate to *prospective* or proposed conduct that the requesting party intends to pursue. The Enforcement Bureau will not respond to hypothetical questions or inquiries about proposals that are mere possibilities. The Bureau also will not respond to requests for opinions that relate to ongoing or prior conduct, and the Bureau may initiate an enforcement investigation to determine whether such conduct violates the open Internet rules.

233. Requests for advisory opinions should include all material information sufficient for Commission staff to make a determination on the proposed conduct; however, staff will have discretion to ask parties requesting opinions, as well as other parties that may have information relevant to the request or that may be impacted by the proposed conduct, for additional information that the staff deems necessary to respond to the request. Because advisory opinions will rely on full and truthful disclosures by the requesting entities, requesters must certify that factual representations made to the Enforcement Bureau are truthful and accurate, and that they have not intentionally omitted any material information from the request. Advisory opinions will expressly state that they rely on the representations made by the requesting party, and that they are premised on the specific facts and representations in the request and any supplemental submissions.

234. Although the Enforcement Bureau will attempt to respond to requests for advisory opinions expeditiously, we decline to establish any firm deadlines to rule on them or issue response letters. The Commission appreciates that if the advisory opinion process is not timely, it will be less valuable to interested parties. However, response times will likely vary based on numerous factors, including the nature and complexity of the issues, the magnitude and sufficiency of the request and the supporting information, and the time it takes for the requester to respond to staff requests for additional information. An advisory opinion will provide the Enforcement Bureau's conclusion regarding whether or not the proposed conduct will comply with the open Internet rules. The Bureau will have discretion to indicate in an advisory opinion that it does not intend

to take enforcement action based on the facts, representations, and warranties made by the requesting party. The requesting party may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and representations necessary for the opinion and the situation conforms to the situation described in the request for opinion. The Enforcement Bureau will not bring an enforcement action against a requesting party with respect to any action taken in good faith reliance upon an advisory opinion if all of the relevant facts were fully, completely, and accurately presented to the Bureau, and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's or the Bureau's approval.

235. Advisory opinions will be issued without prejudice to the Enforcement Bureau's ability to reconsider the questions involved, or to rescind or revoke the opinion. Similarly, because advisory opinions issued at the staff level are not formally approved by the full Commission, they will be issued without prejudice to the Commission's right to later rescind the findings in the opinion. Because advisory opinions will address proposed future conduct, they necessarily will not concern any case or controversy that is ripe for appeal.

236. The Enforcement Bureau will make advisory opinions available to the public. In order to provide meaningful guidance to other stakeholders, the Bureau will also publish the initial request for guidance and any associated materials. Thus, the rules that we adopt establish procedures for entities soliciting advisory opinions to request confidential treatment of certain information.

237. Many commenters support the use of advisory opinions as a means for the Commission to provide authoritative guidance to parties about the application of open Internet rules and the Commission's enforcement intentions. In addition, some commenters suggest that review letters and staff opinions should be voluntary. We agree that solicitation of advisory opinions should be purely voluntary, and that failure to seek such an opinion will not be used as evidence that an entity's practices are inconsistent with our rules.

238. The Wireless Internet Service Providers Association (WISPA) opposes the adoption of an advisory opinion process ''because it assumes an inherent uncertainty in the rules and creates a 'mother may I' regime—essentially creating a system where a broadband provider must ask the Commission for permission when making business decisions.'' According to WISPA, ''[t]his system would increase regulatory uncertainty and stifle broadband providers from innovating new technologies or business methods. It also would be expensive for a small provider to implement, requiring legal and professional expertise.''

239. We find that WISPA's concerns are misguided. Because requests for advisory opinions will be entirely voluntary, we disagree with the contention that their use would force broadband providers to seek permission before implementing new policies or technologies and thereby stifle innovation. In addition, we agree with other commenters that advisory opinions would provide more, not less, certainty regarding the legality of proposed business practices.

(ii) Enforcement Advisories

240. We conclude that the periodic publication of enforcement advisories will advance the Commission's goal of promoting legal certainty regarding the open Internet rules. In the *2014 Open Internet NPRM,* we inquired whether the Commission should issue guidance in the form of enforcement advisories that provide insight into the application of Commission rules. Enforcement advisories are a tool that the Commission has used in numerous contexts, including the current open Internet rules. We asked whether continued use of such advisories would be helpful where issues of potential general application come to the Commission's attention, and whether these advisories should be considered binding policy of the Commission or merely a recitation of staff views.

241. Numerous commenters maintain that the Commission should continue to use enforcement advisories to offer clarity, guidance, and predictability concerning the open Internet rules. We agree. Enforcement advisories do not create new policies, but rather are recitations and reminders of existing legal standards and the Commission's current enforcement intentions. (We disagree with the contention that public notice and comment should be a prerequisite for the Commission to issue an enforcement advisory. The Commission uses its rulemaking procedures when we are adopting rule changes that require notice and comment. Conversely, enforcement advisories are used to remind parties of existing legal standards.) We see no need to deviate from our current practice of issuing such advisories to periodically remind parties about legal standards regarding the open Internet rules.

b. Flexibility

(i) Means of Enforcement and General Enforcement Mechanisms

242. We will preserve the Commission's existing avenues for enforcement of open Internet rules—self-initiated investigation by the Enforcement Bureau, informal complaints, and formal complaints. Commenters agree with the value of retaining these three main mechanisms for commencing enforcement of potential open Internet violations, as this combination ensures multiple entry points to the Commission's processes and gives both complainants and the Commission enforcement flexibility.

243. In addition, the Commission will continue to honor requests for informal complaints to remain anonymous, and will also continue to maintain flexible channels for reporting suspected violations, like confidential calls to the Enforcement Bureau. Although some commenters raise concerns about anonymous complaint filings, others stress the importance of having the option to request anonymity when filing an informal complaint. We note, however, that complainants who are not anonymous frequently have better success getting their concerns addressed because the service provider can then troubleshoot their specific concerns.

244. We also adopt our tentative conclusion in the *2014 Open Internet NPRM* that enforcement of the transparency rule should proceed under the same dispute mechanisms that apply to other rules contained in this Order. We believe that providing both complainants and the Commission with flexibility to address violations of the transparency rule will continue to be important and that the best means to ensure compliance with both the transparency rule and the other rules we adopt today is to apply a uniform and consistent enforcement approach.

245. Finally, we conclude that violations of the open Internet rules will be subject to any and all penalties authorized under the Communications Act and rules, (Section 706 was enacted as part of the 1996 Telecommunications Act, and it is therefore subject to any and all penalties under the Act and our rules. *See Verizon,* 740 F.3d at 650 (''Congress expressly directed that the 1996 Act . . . be inserted into the Communications Act of 1934.'') (quoting *AT&T Corp.* v. *Iowa Utilities Board,* 525 U.S. 366, 377 (1999)).) including but not limited to admonishments, citations, notices of violation, notices of apparent

liability, monetary forfeitures and refunds, cease and desist orders, revocations, and referrals for criminal prosecution. Moreover, negotiated Consent Decrees can contain damages, restitution, compliance requirements, attorneys' fees, declaratory relief, and equitable remedies like injunctions, equitable rescissions, reformations, and specific performance.

(ii) Case-by-Case Analysis

246. The *2014 Open Internet NPRM* emphasized that the process for providing and promoting an open Internet must be flexible enough to accommodate the ongoing evolution of Internet technology. We therefore tentatively concluded that the Commission should continue to use a case-by-case approach, taking into account the totality of the circumstances, in considering alleged violations of the open Internet rules.

247. We affirm our proposal to continue to analyze open Internet complaints on a case-by-case basis. (We reject the suggestion that the Commission promulgate additional rules of conduct because it is unrealistic to expect that in this varied and rapidly evolving technological environment the agency will be able to anticipate the specific conduct that will give rise to future disputes.) We agree with commenters that flexible rules, administered through case-by-case analysis, will enable us to pursue meaningful enforcement, consider consumers' individual concerns, and account for rapidly changing technology.

(iii) Fact-Finding Processes

248. In the *2014 Open Internet NPRM,* we sought comment about how to most effectively structure a flexible fact finding process in analyzing open Internet complaints. We asked what level of evidence should be required in order to bring a claim. With regard to formal complaint proceedings, we also asked what showing should be required for the burden of production to shift from the party bringing the claim to the defendant, as well as whether parties could seek expedited treatment.

249. *Informal Complaints.* Our current rules permitting the filing of informal complaints include a simple and straightforward evidentiary standard. Under section 1.41 of our rules, ''[r]equests should set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request.'' Although our rules do not establish any specific pleading requirements for informal complaints, parties filing them should attempt to provide the Commission with sufficient information and specific facts that, if proven true, would constitute a violation of the open Internet rules.

250. We find that our existing informal complaint rule offers an accessible and effective mechanism for parties—including consumers and small businesses with limited resources—to report possible noncompliance with our open Internet rules without being subject to burdensome evidentiary or pleading requirements. We conclude that there is no basis in the record for modifying the existing standard and decline to do so.

251. *Formal Complaints.* Our current open Internet formal complaint rules provide broad flexibility to adapt to the myriad potential factual situations that might arise. For example, as noted in the *2010 Open Internet Order,* some cases can be resolved based on the pleadings if the complaint and answer contain sufficient factual material to decide the case. A simple case could thus be adjudicated in an efficient, streamlined manner. For more complex matters, the existing rules give the Commission discretion to require other procedures, including discovery, briefing, a status conference, oral argument, an evidentiary hearing, or referral to an administrative law judge (ALJ). Similarly, the rules provide the Commission discretion to grant temporary relief where appropriate.

252. In addition, our open Internet formal complaint process already contemplates burden shifting. (As we noted in the *2010 Open Internet Order,* our current processes permit the Commission to shift the burden of production where appropriate.) Generally, complainants bear the burden of proof and must demonstrate by a preponderance of the evidence that an alleged violation has occurred. A complainant must plead with specificity the basis of its claim and provide facts and documentation, when possible, to establish a *prima facie* rule violation. Defendants must answer each claim with particularity and furnish facts, supported by documentation or affidavit, demonstrating that the challenged practice complies with our rules. Defendants do not have the option of merely pointing out that the complainant has failed to meet his or her burden; they must show that they are in compliance with the rules. The complainant then has an opportunity to respond to the defendant's submission. We retain our authority to shift the burden of production when, for example, the evidence necessary to assess the alleged unlawful practice is predominately in the possession of the broadband provider. If a complaining party believes the burden of production should shift, it should explain why in the complaint. Complainants also must clearly state the relief requested. We conclude that we should retain our existing open Internet procedural rules and that all formal complaints that relate to open Internet disputes, including Internet traffic exchange disputes, will be subject to those rules. Although comparable to the section 208 formal complaint rules, the open Internet rules are less burdensome on complainants, who in this context are likely to be consumers or small edge providers with limited resources. (The section 208 rules, for example, require complainants to submit information designations, proposed findings of fact and conclusions of law, and affidavits demonstrating the basis for complainant's belief for unsupported allegations and why complainant could not ascertain facts from any source. *See, e.g.,* 47 CFR 1.721(a) (5), (6), (10). The open Internet formal complaint rules do not contain similar requirements.) Moreover, as described above, the open Internet procedural rules allow the Commission broader flexibility in tailoring proceedings to fit particular cases. (For example, under the open Internet rules, the Commission may order an evidentiary hearing before an administrative law judge (ALJ) or Commission staff. *See* 47 CFR 8.14(e)(1), (g). The section 208 rules contain no such provision. In addition, unlike the section 208 rules, the open Internet rules do not contain numerical limits on discovery requests. *Compare id.* section 8.14(f) *with id.* section 1.729(a).)

253. Several commenters stress the need for speedy resolution of complaints, given the rapid pace of Internet commerce and the potential consumer harms and market chilling effects deriving from slow resolution. While we share these concerns, we decline to adopt fixed, short deadlines for resolving formal complaints but pledge to move expeditiously. As noted in the *2010 Open Internet Order,* the Commission may shorten deadlines or otherwise revise procedures to expedite the adjudication of complaints. Additionally, the Commission will determine, on the basis of the evidence before it, whether temporary relief should be afforded any party pending final resolution of a complaint and, if so, the nature of any such temporary relief. (The Supreme Court has affirmed

the Commission's authority to impose interim injunctive relief pursuant to section 4(i) of the Act.) As noted above, some open Internet cases may be straightforward and suitable for decision in a 60 to 90 day timeframe. Other cases may be more factually and technologically complex, requiring more time for the parties to pursue discovery and build an adequate record, and sufficient time for the Commission to make a reasoned decision. Therefore, we find that the existing process—allowing parties to request expedited treatment—best fits the needs of potential open Internet formal complaints.

c. Effective Access To Dispute Resolution

254. In this section, we adopt the proposal from the *2014 Open Internet NPRM* to establish an ombudsperson to assist consumers, businesses, and organizations with open Internet complaints and questions by ensuring these parties have effective access to the Commission's processes that protect their interests. The record filed supports our conclusion that these parties would benefit from having an ombudsperson as a point of contact within the Commission for questions and complaints.

255. Comments in support of the establishment of an ombudsperson clearly demonstrate the range of groups a dedicated ombudsperson can serve. For example, the American Association of People with Disabilities expressed particular interest in the potential of the ombudsperson to monitor concerns regarding accessibility and the open Internet. In addition, the comments of Higher Education Libraries asked that libraries be amongst the groups served by the ombudsperson and those of the Alaska Rural Coalition expressed interest in the ombudsperson also being accessible to small carriers with concerns. In contrast, some commenters expressed concerns about the creation of a dedicated ombudsperson. However, as described below, the ombudsperson will work as a point of contact and a source of assistance as needed, not as an advocate or as an officer who must be approached for approval, addressing many of these concerns.

256. The Open Internet Ombudsperson will serve as a point of contact to provide assistance to individuals and organizations with questions or complaints regarding the open Internet to ensure that small and often unrepresented groups reach the appropriate bureaus and offices to address specific issues of concern. For example, the ombudsperson will be able to provide initial assistance with the Commission's dispute resolution procedures by directing such parties to the appropriate templates for formal and informal complaints. We expect the ombudsperson will assist interested parties in less direct but equally important ways. These could include conducting trend analysis of open Internet complaints and, more broadly, market conditions, that could be summarized in reports to the Commission regarding how the market is functioning for various stakeholders. The ombudsperson may investigate and bring attention to open Internet concerns, and refer matters to the Enforcement Bureau for potential further investigation. The ombudsperson will be housed in the Consumer & Governmental Affairs Bureau, which will remain the initial informal complaint intake point, and will coordinate with other bureaus and offices, as appropriate, to facilitate review of inquiries and complaints regarding broadband services.

3. Complaint Processes and Forms of Dispute Resolution

a. Complaint Filing Procedures

257. In the *2014 Open Internet NPRM,* we sought comment on how open Internet complaints should be received, processed, and enforced. We asked if there were ways to improve access to our existing informal and formal complaint processes, especially for consumers, small businesses, and other entities with limited resources and knowledge of how our complaint processes work. We also asked whether the current enforcement and dispute resolution tools at the Commission's disposal are sufficient for resolving violations of open Internet rules.

258. *Informal Complaints.* First, we will implement processes to make it easier to lodge informal open Internet complaints, including a new, more intuitive online complaint interface. The Commission recently launched a new Consumer Help Center, which provides a user-friendly, streamlined means to access educational materials on consumer issues and to file complaints. Consumers who seek to file an open Internet complaint should visit the Consumer Help Center portal and click the Internet icon for the materials or the online intake system for complaints. The complaint intake system is designed to guide the consumer efficiently through the questions that need to be answered in order to file a complaint. The Consumer Help Center will make available aggregate data about complaints received, including those pertaining to open Internet issues. Some data is currently available, with additional and more granular data to be provided over time. We believe these efforts will improve access to the Commission's open Internet complaint processes.

259. *Formal Complaints.* With respect to formal complaints, we amend the Commission's Part 8 open Internet rules to require electronic filing of all pleadings in open Internet formal complaint proceedings. Currently, parties to such proceedings must file hard copies of pleadings with the Office of the Secretary. This process is time-consuming for the parties and makes it difficult for the public to track case developments. Although members of the public may obtain copies of the pleadings from the Commission's Reference Information Center, there is no way to search for or view pleadings electronically. Today's actions modernize and reform these existing procedures. (The rule changes described in this section do not apply to open Internet *informal* complaints. Consumers will continue to have the ability to file informal complaints electronically with the Consumer & Governmental Affairs Bureau. The form for filing an informal complaint is available at *https://consumercomplaints.fcc.gov/hc/en-us.*)

260. In 2011, the Commission released a Report and Order revising part 1 and part 0 of its rules. One aspect of the *Part 1 Order* was a requirement that docketing and electronic filing begin to be utilized in proceedings involving ''[n]ewly filed section 208 formal common carrier complaints and newly filed section 224 pole attachment complaints before the Enforcement Bureau.'' On November 12, 2014, the Commission released an Order that amended its procedural rules governing formal complaints under section 208 and pole attachment complaints under section 224 to require electronic filing. We established within ECFS a ''Submit a Non-Docketed Filing'' module where all such complaints must be filed because staff must review a complaint for conformance with the Commission's rules before the matter can receive its own unique ECFS proceeding number.

261. We now extend those rule changes to open Internet formal complaints. (We hereby amend the caption for the ECFS docket to ''*section 208 and 224 and Open Internet Complaint Inbox, Restricted Proceedings.*'' We also amend rule 8.16, which governs confidentiality of proprietary information, to conform to the changes we made regarding confidentiality in the section 208 and section 224 complaint rules. *See infra*

Appendix (detailing revisions to 47 CFR 8.16).) When filing such a complaint, as of the effective date of this Order, the complainant will be required to select ''Open Internet Complaint: Restricted Proceeding'' from the ''Submit a Non-Docketed Filing'' module in ECFS. The filing must include the complaint, as well as all attachments to the complaint. (All electronic filings must be machine-readable, and files containing text must be formatted to allow electronic searching and/or copying (*e.g.,* in Microsoft Word or PDF format). Non-text filings (*e.g.,* Microsoft Excel) must be submitted in native format. Be certain that filings submitted in .pdf or comparable format are not locked or password-protected. If those restrictions are present (*e.g.,* a document is locked), the ECFS system may reject the filing, and a party will need to resubmit its document within the filing deadline. The Commission will consider granting waivers to this electronic filing requirement only in exceptional circumstances.) When using ECFS to initiate new proceedings, a complainant no longer will have to file its complaint with the Office of the Secretary unless the complaint includes confidential information.

262. Enforcement Bureau staff will review new open Internet formal complaints for conformance with procedural rules (including fee payment). As of the effective date of this Order, complainants no longer will submit a hard copy of the complaint with the fee payment as described in rule 1.1106. Instead, complainants must first transmit the complaint filing fee to the designated payment center and then file the complaint electronically using ECFS. (Complainants may transmit the complaint filing fee via check, wire transfer, or electronically using the Commission's Fee Filer System (Fee Filer).)

263. Assuming a complaint satisfies this initial procedural review, Enforcement Bureau staff then will assign an EB file number to the complaint (EB Identification Number), give the complaint its own case-specific ECFS proceeding number, and enter both the EB Identification Number and ECFS proceeding number into ECFS. At that time, Enforcement Bureau staff will post a Notice of Complaint Letter in the case-specific ECFS proceeding and transmit the letter (and the complaint) via email to the defendant. On the other hand, if a filed complaint does not comply with the Commission's procedural rules, Enforcement Bureau staff will serve a rejection letter on the complainant and post the rejection letter and related correspondence in ECFS. Importantly, the rejection letter will not preclude the complainant from curing the procedural infirmities and refiling the complaint.

264. As of the effective date of this Order, all pleadings, attachments, exhibits, and other documents in open Internet formal complaint proceedings must be filed using ECFS, both in cases where the complaint was initially filed in ECFS and in pending cases filed under the old rules. With respect to complaints filed prior to the effective date of this Order, Enforcement Bureau staff will assign an individual ECFS proceeding number to each existing proceeding and notify existing parties by email of this new ECFS number. This ECFS proceeding number will be in addition to the previously-assigned number. The first step in using ECFS is to input the individual case's ECFS proceeding number or EB Identification Number. The new rules allow parties to serve post-complaint submissions on opposing parties via email without following up by regular U.S. mail. Parties must provide hard copies of submissions to staff in the Market Disputes Resolution Division of the Enforcement Bureau upon request.

265. Consistent with existing Commission electronic filing guidelines, any party asserting that materials filed in an open Internet formal complaint proceeding are proprietary must file with the Commission, using ECFS, a public version of the materials with any proprietary information redacted. The party also must file with the Secretary's Office an unredacted hard copy version that contains the proprietary information and clearly marks each page, or portion thereof, using bolded brackets, highlighting, or other distinct markings that identify the sections of the filing for which a proprietary designation is claimed. (Filers must ensure that proprietary information has been properly redacted and thus is not viewable. If a filer inadvertently discloses proprietary information, the Commission will not be responsible for that disclosure.) Each page of the redacted and unredacted versions must be clearly identified as the ''Public Version'' or the ''Confidential Version,'' respectively. Both versions must be served on the same day.

b. Alternative Dispute Resolution

266. The Commission sought comment on various modes of alternative dispute resolution for resolving open Internet disputes. Currently, parties with disputes before the Commission are free to voluntarily engage in mediation, which is offered by the Market Disputes Resolution Division (MDRD) at no charge to the parties. This process has worked well and has led to the effective resolution of numerous complaints. We will take steps to improve awareness of this approach. In the *2014 Open Internet NPRM,* we asked whether other approaches, such as arbitration, should be considered, in order to ensure access to dispute resolution by smaller edge providers and other entities without resources to engage in the Commission's formal complaint process.

267. We decline to adopt arbitration procedures or to mandate arbitration for parties to open Internet complaint proceedings. Under the rules adopted today, parties are still free to engage in mediation and outside arbitration to settle their open Internet disputes, but alternative dispute resolution will not be required. (As a general matter, the Commission lacks the ability to subdelegate its authority over these disputes to a private entity, like a third-party arbitrator, *see U.S. Telecom Ass'n* v. *FCC,* 359 F.3d 554, 566 (D.C. Cir. 2004) (''[W]hile federal agency officials may subdelegate their decision-making authority to subordinates absent evidence of contrary congressional intent, they may not subdelegate to outside entities–private or sovereign–absent affirmative evidence of authority to do so''), and ''may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.'' As noted in the *2014 Open Internet NPRM,* however, mandatory third-party arbitration may be allowed so long as it is subject to *de novo* review by the Commission.) Commenters generally do not favor arbitration in this context and recommend that the Commission not adopt it as the default method for resolving complaints. Commenters suggest that mandatory arbitration, in particular, may more frequently benefit the party with more resources and more understanding of dispute procedure, and therefore should not be adopted. We agree with these concerns and conclude that adoption of arbitration rules is not necessary or appropriate in this context.

c. Multistakeholder Processes and Technical Advisory Groups

268. In the *2014 Open Internet NPRM,* the Commission sought comment on whether enforcement of open Internet rules—including resolution of open Internet disputes—could be supported by multistakeholder processes that enable the development of independent standards to guide the Commission in compliance determinations. The Commission also asked whether it

should incorporate the expertise of technical advisory groups into these determinations.

269. We conclude that incorporating groups with technical expertise into our consideration of formal complaints has the potential to inform the Commission's judgment and improve our understanding of complex and rapidly evolving technical issues. By requiring electronic filing of all pleadings in open Internet formal complaint proceedings, we will enable interested parties to more easily track developments in the proceedings and participate as appropriate. Although formal complaint proceedings are generally restricted for purposes of the Commission's *ex parte* rules, interested parties may seek permission to file an amicus brief. The Commission ''consider[s] on a case-by-case basis motions by non-parties wishing to submit amicus-type filings addressing the legal issues raised in [a] proceeding,'' and grants such requests when warranted. (If a party to the proceeding is a member of or is otherwise represented by an entity that requests leave to file an amicus brief, the entity must disclose that affiliation in its request.) Thus, for example, the Commission granted a motion for leave to file an amicus brief in a section 224 pole attachment complaint proceeding ''in light of the broad policy issues at stake.

270. To further advance the values underlying multistakeholder processes—inclusivity, transparency, and expertise—we also amend our Part 8 formal complaint rules by delegating authority to the Enforcement Bureau, in its discretion, to request a written opinion from an outside technical organization. As reviewing courts have established, ''[a] federal agency may turn to an outside entity for advice and policy recommendations, provided the agency makes the final decisions itself.''

271. In this instance, given the potential complexity of the issues in open Internet formal complaint proceedings, it may be particularly useful to obtain objective advice from industry standard-setting bodies or other similar organizations. Providing Commission staff with this flexibility also will enable more informed determinations of technical Internet issues that reflect current industry standards and permit staff to keep pace with rapidly changing technology. (Whenever possible, the Enforcement Bureau should request advisory opinions from expert organizations whose members do not include any of the parties to the proceeding. If no such organization exists, the Enforcement Bureau may refer issues to an expert organization with instructions that representatives of the parties to the complaint proceeding may not participate in the organization's consideration of the issues referred or the drafting of its advisory opinion.) Expert organizations will not be required to respond to requests from the Enforcement Bureau for opinions; however, any organization that elects to do so must provide the opinion within 30 days of the request—unless otherwise specified by the staff—in order to facilitate timely dispute resolution. We find that this approach will allow for the inclusivity the multistakeholder process offers, while also providing the predictability and legal certainty of the Commission's formal dispute resolution process.

272. For informal complaints and investigations, the Enforcement Bureau's efforts will continue to be informed by resolutions of formal complaints, and will also continue to be informed by the standards developed by existing multistakeholder, industry, and consumer groups. The Enforcement Bureau will also work with interested parties on an informal basis to identify ways to promote compliance with the open Internet rules.

*F. Legal Authority*

273. We ground the open Internet rules we adopt today in multiple sources of legal authority—section 706, Title II, and Title III of the Communications Act. We marshal all of these sources of authority toward a common statutorily-supported goal: To protect and promote Internet openness as platform for competition, free expression and innovation; a driver of economic growth; and an engine of the virtuous cycle of broadband deployment.

274. We therefore invoke multiple, complementary sources of legal authority. As a number of parties point out, our authority under section 706 is not mutually exclusive with our authority under Titles II and III of the Act. Rather, we read our statute to provide several, alternative sources of authority that work in concert toward common ends. As described below, under section 706, the Commission has the authority to adopt these open Internet rules to encourage and accelerate the deployment of broadband to all Americans. In the Declaratory Ruling and Order below, we find, based on the current factual record, that BIAS is a telecommunications service subject to Title II and exercise our forbearance authority to establish a ''light-touch'' regulatory regime, which includes the application of sections 201 and 202. This finding both removes the common carrier limitation from the exercise of our affirmative section 706 authority and also allows us to exercise authority directly under sections 201 and 202 of the Communications Act in adopting today's rules. Finally, these rules are also supported by our Title III authority to protect the public interest through spectrum licensing. In this section, we discuss the basis and scope of each of these sources of authority and then explain their application to the open Internet rules we adopt today.

1. Section 706 Provides Affirmative Legal Authority for Our Open Internet Rules

275. Section 706 affords the Commission affirmative legal authority to adopt all of today's open Internet rules. Section 706(a) directs the Commission to take actions that ''shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'' To do so, the Commission may utilize ''in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' Section 706(b), in turn, directs that the Commission ''shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market,'' if it finds after inquiry that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion. ''Advanced telecommunications capability'' is defined as ''high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.'' Sections 706(a) and (b) each provide an express, affirmative grant of authority to the Commission and the rules we adopt today fall well within their scope.

276. *Section 706(a) and (b) Are Express Grants of Authority.* In *Verizon,* the D.C. Circuit squarely upheld as reasonable the Commission's reading of section 706(a) as an affirmative grant of authority. (*Verizon,* 740 F.3d at 637 (''The question, then, is this: Does the Commission's current understanding of section 706(a) as a grant of regulatory authority represent a reasonable

interpretation of an ambiguous statute? We believe it does.'') A few commenters argue that the court incorrectly concluded that section 706(a) and (b) are express grants of authority. For the reasons discussed in the text, by the Commission in the *2010 Open Internet Order,* and the court in *Verizon* and *In re FCC,* we disagree.) Finding that provision ambiguous, the court upheld the Commission's interpretation as consistent with the statutory text, (As the *Verizon* court explained, for example, ''section 706(a)'s reference to state commissions does not foreclose such a reading'' of section 706(a) as an express grant of authority. *Id.* at 638. Nor, as one of the dissents suggests, (*see* Pai Dissent at 55), is the statute's reference to ''[s]tate commission'' rendered meaningless by the Commission's reaffirmation that BIAS is an interstate service for regulatory purposes. The Commission's interpretation does not preclude all state commission action in this area, just that which is inconsistent with the federal regulatory regime we adopt today.) legislative history, and the Commission's lengthy history of regulating Internet access.

277. Separately addressing section 706(b), the D.C. Circuit held, citing similar reasons, that the ''Commission has reasonably interpreted section 706(b) to empower it to take steps to accelerate broadband deployment if and when it determines that such deployment is not ''reasonable and timely.'' The 10th Circuit, in upholding the Commission's reform of our universal service and inter-carrier compensation regulatory regime, likewise concluded that the Commission reasonably construed section 706(b) as an additional source of authority for those regulations.

278. In January, the Commission adopted the *2015 Broadband Progress Report,* which determined that advanced telecommunications capability is not being deployed in a reasonable and timely manner to all Americans. That determination triggered our authority under section 706(b) to take immediate action, including the adoption of today's open Internet rules, to accelerate broadband deployment to all Americans.

279. We interpret sections 706(a) and 706(b) as independent, complementary sources of affirmative Commission authority for today's rules. Our interpretation of section 706(a) as a grant of express authority is in no way dependent upon our findings in the section 706(b) inquiry. Thus, even if the Commission's inquiry were to have resulted in a positive conclusion such that our section 706(b) authority were not triggered this would not eliminate the Commission's authority to take actions to encourage broadband deployment under section 706(a). (The Commission takes such measures precisely to achieve section 706(b)'s goal of accelerating deployment. That they may succeed in achieving that goal so as to contribute to a positive section 706(b) finding does not subsequently render them unnecessary or unauthorized without any further Commission process. Even if that were not the case, independent section 706(a) authority would remain. We mention, however, two legal requirements that appear relevant. First, section 408 of the Act mandates that ''all'' FCC orders (other than orders for the payment of money) ''shall continue in force for the period of time specified in the Order or until the Commission or a court of competent jurisdiction issues a superseding Order.'' 47 U.S.C. 408. Second, the Commission has a ''continuing obligation to practice reasoned decisionmaking'' that includes revisiting prior decisions to the extent warranted. *Aeronautical Radio* v. *FCC,* 928 F.2d 428 (D.C. Cir. 1991). We are aware of no reason why these requirements would not apply in this context.)

280. We reject arguments that we lack rulemaking authority to implement section 706 of the 1996 Act. In *Verizon,* the D.C. Circuit suggested that section 706 was part of the Communications Act of 1934. Under such a reading, the Commission would have all its standard rulemaking authority under sections 4(i), 201(b) and 303(r) to adopt rules implementing that provision. (47 U.S.C. 154(i) (''The Commission may . . . make such rules and regulations . . . not inconsistent with this chapter, as may be necessary in the execution of its functions.''); 47 U.S.C. 201(b) (''The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.''); 47 U.S.C. 303(r) (''Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall . . . [m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter''). Even if this were not the case, by its terms our section 4(i) rulemaking authority is not limited just to the adoption of rules pursuant to substantive jurisdiction under the Communications Act, and the *Verizon* court cited as reasonable the Commission's view that Congress, in placing upon the Commission the obligation to carry out the purposes of section 706, ''necessarily invested the Commission with the statutory authority to carry out those acts.''

281. *The Open Internet Rules Fall Well Within the Scope of Our section 706 Authority.* In *Verizon,* the D.C. Circuit agreed with the Commission that while authority under section 706 may be broad, it is not unbounded. Both the Commission and the court have articulated its limits. First, section 706 regulations must be within the scope of the Commission's subject matter jurisdiction over ''interstate and foreign communications by wire and radio.'' (Some have read this to require that regulations under section 706 must be ancillary to existing Commission authority in Title II, III or VI of the Act. We disagree. To be sure, with the Commission's exercise of both section 706 and ancillary authority, regulations must be within the Commission's subject matter jurisdiction. Indeed, this is the first prong of the test for ancillary jurisdiction. *American Library Ass'n* v. *FCC,* 406 F.3d 689, 703–04 (D.C. Cir. 2005). But we do not read the *Verizon* decision as applying the second prong—which requires that the regulation be sufficiently linked to another provision of the Act—to our exercise of section 706 authority. Section 706 ''does not limit the Commission to using other regulatory authority already at its disposal, but instead grants it the power necessary to fulfill the statute's mandate.'' *See Verizon,* 740 F.3d at 641 (citing *2010 Open Internet Order,* 25 FCC Rcd at 17972, para. 123)) And second, any such regulations must be designed to achieve the purpose of section 706(a)—to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.''

282. In *Verizon,* the court firmly concluded that the Commission's *2010 Open Internet Order* regulations fell within the scope of section 706. It explained that the rules ''not only apply directly to broadband providers, the precise entities to which section 706 authority to encourage broadband deployment presumably extends, but also seek to promote the very goal that Congress explicitly sought to promote.'' Further, the court credited ''the Commission's prediction that the *Open Internet Order* regulations will encourage broadband deployment.'' The same is true of the open Internet rules we adopt today. Our regulations again only apply to last-mile providers of broadband services—services that are not only within our subject matter

jurisdiction, but also expressly within the terms of section 706. (In response to parties expressing concerns that section 706 could be read to impose regulations on edge providers or others in the Internet ecosystem, we emphasize that today's rules apply only to last-mile broadband providers. We reject calls from other commenters to exercise our section 706 authority to adopt open Internet regulations for edge providers. Today's rules are specifically designed to address broadband providers' incentives and ability to erect barriers that harm the virtuous cycle. We see no basis for applying these rules to any other providers.) And, again, each of our rules is designed to remove barriers in order to achieve the express purposes of section 706. We also find that our rules will provide additional benefits by promoting competition in telecommunications markets, for example, by fostering competitive provision of VoIP and video services and informing consumers' choices.

2. Authority for the Open Internet Rules Under Title II with Forbearance

283. In light of our Declaratory Ruling below, the rules we adopt today are also supported by our legal authority under Title II to regulate telecommunications services. For the reasons set forth below, we have found that BIAS is a telecommunications service and, for mobile broadband, commercial mobile services or its functional equivalent. While we forbear from applying many of the Title II regulations to this service, we have applied sections 201, 202, and 208 (along with related enforcement authorities). These provisions provide an alternative source of legal authority for today's rules.

284. Section 201(a) places a duty on common carriers to furnish communications services subject to Title II ''upon reasonable request'' and ''establish physical connections with other carriers'' where the Commission finds it to be in the public interest. Section 201(b) provides that ''[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.'' It also gives the Commission the authority to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.'' Section 202(a) makes it ''unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.'' As described below, these provisions provide additional independent authority for the rules we adopt today.

3. Title III Provides Additional Authority for Mobile Broadband Services

285. With respect to mobile broadband Internet access services, today's open Internet rules are further supported by our authority under Title III of the Act to protect the public interest through spectrum licensing. While this authority is not unbounded, we exercise it here in reliance upon particular Title III delegations of authority.

286. Section 303(b) directs the Commission, consistent with the public interest, to ''[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.'' Today's conduct regulations do precisely this. They lay down rules about ''the nature of the service to be rendered'' by licensed entities providing mobile broadband Internet access service, making clear that this service may not be offered in ways that harm the virtuous cycle. Today's rules specify the form this service must take for those who seek licenses to offer it. In providing such licensed service, broadband providers must adhere to the rules we adopt today.

287. This authority is bolstered by at least two additional provisions. First, as the D.C. Circuit has explained, section 303(r) supplements the Commission's ability to carry out its mandates via rulemaking. Second, section 316 authorizes the Commission to adopt new conditions on existing licenses if it determines that such action ''will promote the public interest, convenience, and necessity.'' (The Commission also has ample authority to impose conditions to serve the public interest in awarding licenses in the first instance. *See* 47 U.S.C. 309(a); 307(a).) Nor do today's rules work any fundamental change to those licenses. Rather we understand our rules to be largely consistent with the current operation of the Internet and the current practices of mobile broadband service providers.

4. Applying These Legal Authorities to Our Open Internet Rules

288. *Bright line rules.* Applying these statutory sources of authority, we have ample legal bases on which to adopt the three bright-line rules against blocking, throttling, and paid prioritization. To begin, we have found that broadband providers have the incentive and ability to engage in such practices—which disrupt the unity of interests between end users and edge providers and thus threaten the virtuous cycle of broadband deployment. As the D.C. Circuit found with respect to the 2010 conduct rules, such broadband provider practices fall squarely within our section 706 authority. The court struck down the 2010 conduct rules after finding that the Commission failed to provide a legal justification that would take the rules out of the realm of impermissibly mandating common carriage, but did not find anything impermissible about the need for such rules to protect the virtuous cycle. Given our classification of broadband Internet access service as a telecommunications service, the court's rationale for vacating our 2010 conduct rules no longer applies and, for the reasons discussed above, we have legal justification to support our bright-line rules under section 706.

289. Our bright-line rules are also well grounded in our Title II authority. In Title II contexts, the Commission has made clear that blocking traffic generally is unjust and unreasonable under section 201. The Commission has likewise found it unjust and unreasonable for a carrier to refuse to allow non-harmful devices to attach to the network. And with respect to throttling, Commission precedent has likewise held that ''no carriers . . . may block, choke, reduce or restrict traffic in any way.'' We see no basis for departing from such precedents in the case of broadband Internet access services. As discussed above, the record here demonstrates that blocking and throttling broadband Internet access services harm consumers and edge providers, threaten the virtuous cycle, and deter broadband deployment. Consistent with our prior Title II precedents, we conclude that blocking and throttling of broadband Internet access services is an unjust and unreasonable practice under section 201(b).

290. Some parties have suggested that the Commission cannot adopt a rule banning paid prioritization under Title II. We disagree and conclude that paid prioritization is an unjust and unreasonable practice under section 201(b). The unjust and unreasonable

standards in sections 201 and 202 afford the Commission significant discretion to distinguish acceptable behavior from behavior that violates the Act. Indeed, the very terms ''unjust'' and ''unreasonable'' are broad, inviting the Commission to undertake the kind of line-drawing that is necessary to differentiate just and reasonable behavior on the one hand from unjust and unreasonable behavior on the other. (As the D.C. Circuit has stated, for example, ''the generality of these terms . . . opens a rather large area for the free play of agency discretion, limited of course by the familiar 'arbitrary' and 'capricious' standard in the Administrative Procedure Act.'' *Bell Atlantic Tel. Co. v. FCC,* 79 F.3d 1195, 1202 (D.C. Cir. 1996). Stated differently, because both sections ''set out broad standards of conduct,'' it is up to the ''Commission [to] give[] the standards meaning by defining practices that run afoul of carriers' obligation, either by rulemaking or by case-by-case adjudication.'')

291. Acting within this discretion, the Commission has exercised its authority, both through adjudication and rulemaking, under section 201(b) to ban unjust and unreasonable carrier practices as unlawful under the Act. (The Commission need not proceed through adjudication in announcing a broad ban on a particular practice. Indeed, the text of section 201(b) itself gives the Commission authority to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.'' 47 U.S.C. 201(b).) Although the particular circumstances have varied, in reviewing these precedents, we find that the Commission generally takes this step where necessary to protect competition and consumers against carrier practices for which there was either no cognizable justification for the action or where the public interest in banning the practice outweighed any countervailing policy concerns. Based on the record here, we find that paid prioritization presents just such a case, threatening harms to consumers, competition, innovation, and deployment that outweigh any possible countervailing justification of public interest benefit. Our interpretation and application of section 201(b) in this case to ban paid prioritization is further bolstered by the directive in section 706 to take actions that will further broadband deployment.

292. Several commenters argue that we cannot ban paid prioritization under section 202(a), pointing to Commission precedents allowing carriers to engage in discrimination so long as it is reasonable. As discussed above, however, we adopt this rule pursuant to sections 201(b) and 706, not 202(a). And nothing about section 202(a) prevents us from doing so. We recognize that the Commission has historically interpreted section 202(a) to allow carriers to engage in reasonable discrimination, including by charging some customers more for better, faster, or more service. But those precedents stand for the proposition that such discrimination is *permitted,* not that it must be allowed in all cases. (To be sure, section 202(a) prohibits ''unreasonable discrimination'' for ''like'' communications services. But this provision does not, on its face, deprive the Commission of the authority to take actions under other provisions of the Act against discrimination that may not constitute ''unreasonable discrimination'' under section 202(a).) None of those cases of discrimination presented the kinds of harms demonstrated in the record here—harms that form the basis of our decision to ban the practice as unjust and unreasonable under section 201(b), not 202(a). Furthermore, none of those precedents involved practices that the Commission has twice found threaten to create barriers to broadband deployment that should be removed under section 706. In light of our discretion in interpreting and applying sections 201 and 202 and insofar as section 706(a) is ''a 'fail-safe' that 'ensures' the Commission's ability to promote advanced services,'' we decline to interpret section 202(a) as preventing the Commission from exercising its authority under sections 201(b) and 706 to ban paid prioritization practices that harm Internet openness and deployment. (To the extent our prior precedents suggest otherwise, for the reasons discussed in the text, we disavow such an interpretation as applied to the open Internet context.)

293. With respect to mobile broadband Internet access services, our bright-line rules are also grounded in the Commission's Title III authority to ensure that spectrum licensees are providing service in a manner consistent with the public interest.

294. *No-Unreasonable Interference/Disadvantage Standard.* As with our bright-line rules, the no-unreasonable interference/disadvantage standard we adopt today is supported by our section 706 authority. Beyond the practices addressed by our bright-line rules, we recognize that broadband providers may implement unknown practices or engage in new types of practices in the future that could threaten harm by unreasonably interfering with the ability of end users and edge providers to use broadband Internet access services to reach one another. Such unreasonable interference creates a barrier that impedes the virtuous cycle, threatening the open nature of the Internet to the detriment of consumers, competition, and deployment. For conduct outside the three bright-line rules, we adopt the no-unreasonable interference/disadvantage standard to ensure that broadband providers do not engage in practices that threaten the open nature of the Internet in other or novel ways. This standard is tailored to the open Internet harms we wish to prevent, including harms to consumers, competition, innovation, and free expression—all of which could impair the virtuous cycle and thus deter broadband deployment, undermining the goals of section 706.

295. The no-unreasonable interference/disadvantage standard is also supported by section 201 and 202 of the Act, which require broadband providers to engage in practices that are just and reasonable, and not unreasonably discriminatory. The prohibition on no-unreasonable interference/disadvantage represents our interpretation of these 201 and 202 obligations in the open Internet context—an interpretation that is informed by section 706's goals of promoting broadband deployment. (Given the generality of the terms in sections 201 and 202, the Commission has significant discretion when interpreting how those sections apply to the different services subject to Title II.) In other words, for BIAS, we will evaluate whether a practice is unjust, unreasonable, or unreasonably discriminatory using this no-unreasonable interference/disadvantage standard. We note, however, that this rule—on its own—does not constitute common carriage *per se.* (Not all requirements which apply to common carriers need impose common carriage *per se. See Verizon,* 740 F.3d at 652 (citing *Cellco,* 700 F.3d at 547 (''[C]ommon carriage is not all or nothing—there is a gray area in which although a given regulation might be applied to common carriers, the obligations imposed are not common carriage *per se.* It is in this realm—the space between *per se* common carriage and *per se* private carriage—that the Commission's determination that a regulation does or does not confer common carrier status warrants deference.'')); *Id.* at 653 (citing *NARUC* v. *FCC,* 533 F.2d 601, 608 (D.C. Cir. 1976) (*NARUC II*) (''Since it is clearly possible for a given entity to carry on many types of activities, it is at least

logical to conclude that one may be a common carrier with regard to some activities but not others.'')).) The no-unreasonable interference/disadvantage standard, *standing alone,* contains no obligation to provide broadband service to any consumer or edge provider and would not, in its isolated application, necessarily preclude individualized negotiations so long as they do not otherwise unreasonably interfere with the ability of end users and edge providers to use broadband Internet access services to reach one another. Rather, particular practices or arrangements that are not barred by our rules against blocking, throttling, and paid prioritization will be evaluated based on the facts and circumstances they present using a series of factors specifically designed to protect the virtuous cycle of innovation and deployment. Thus, this is a rule tied to particular harms. Broadband providers, having chosen to provide BIAS, may not do so in a way that harms the virtuous cycle.

296. For mobile broadband providers, the no-unreasonable interference/disadvantage standard finds additional support in the Commission's Title III authority as discussed above. The Commission has authority to ensure that broadband providers, having obtained a spectrum license to provide mobile broadband service, must provide that service in a manner consistent with the public interest. (The Commission has broad authority to prescribe the nature of services to be rendered by licensed stations, consistent with the public interest. 47 U.S.C. 303(b); *Cellco Partnership* v. *FCC,* 700 F.3d 534, 542 (D.C. Cir. 2012) (''Although Title III does not 'confer an unlimited power,' the Supreme Court has emphasized that it does endow the Commission with 'expansive powers' and a 'comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.' '') (internal citations omitted) (quoting *NBC* v. *United States,* 319 U.S. 190, 216, 219 (1943)).) This standard provides guidance on how the Commission will evaluate particular broadband practices, not otherwise barred by our bright-line rules, to ensure that they are consistent with the public interest.

297. *Transparency Rule.* The D.C. Circuit severed and upheld the Commission's 2010 transparency rule in *Verizon.* While the majority did not expressly opine on the legal authority for the Commission's prior transparency rule, we feel confident that like the 2010 transparency rule, the enhanced transparency rule we adopt today falls well within multiple, independent sources of the Commission's authority. Beginning with section 706, the transparency rule ensures that consumers have sufficient information to make informed choices thereby facilitating competition in the local telecommunications market (to the extent competitive choices are available). (To encourage deployment of ''advanced telecommunications capability,'' section 706(a) authorizes the Commission to engage in measures that ''promote competition in the local telecommunications market.'' 47 U.S.C. 1302(a). And section 706(b) references ''promoting competition in the telecommunications market'' as among the immediate actions that Commission shall take to accelerate deployment of ''advanced telecommunications capability'' upon a determination that it is not being reasonably and timely deployed. 47 U.S.C. 1302(b). We interpret these references to the ''telecommunications market'' to include the market for ''advanced telecommunications capability.'' In any event, having classified broadband Internet access services as ''telecommunications services,'' the Commission actions to promote competition among broadband Internet access services clearly promote competition in the ''telecommunications market.'') Furthermore, these disclosures remove potential information barriers by ensuring that edge providers have the necessary information to develop innovative products and services that rely on the broadband networks to reach consumers, a crucial arc of the virtuous cycle of broadband deployment. Our transparency rule is also supported by Title II. The Commission has relied on section 201(b) in related billing contexts to ensure that carriers convey accurate and sufficient information about the services they provide to consumers. We do so here as well. (For the reasons discussed above, we likewise rely on Title III to ensure that spectrum licensees provide mobile broadband Internet access service consistent with the public interest.)

298. *Enforcement.* We also make clear that we have ample authority to enforce the rules we adopt today. Our rules today carry out the provisions of the Communications Act and are thus are covered by our Title IV and V authorities to investigate and enforce violations of these rules. With specific respect to section 706, as noted above, in *Verizon,* the D.C. Circuit suggested that section 706 was part of the Communications Act of 1934. Under such a reading, rules adopted pursuant to section 706 fall within our Title IV and V authorities. But even if this were not the case, we believe it reasonable to interpret section 706 itself as a grant of authority to investigate and enforce our rules. (Moreover, as discussed above, to the extent that section 706 was not viewed as part of the Communications Act, we have authority under section 4(i) of the Communications Act to adopt rules implementing section 706. Thus, even then the Commission's rules, insofar as they are based on our substantive jurisdiction under section 706, nonetheless would be issued under the Communications Act.) Our enforcement authority was not explicitly discussed in either the *2010 Open Internet Order* or the *Verizon* case. As noted above, the court did cite as reasonable, however, the Commission's view that Congress, in placing upon the Commission the obligation to carry out the purposes of section 706, ''necessarily invested the Commission with the statutory authority to carry out those acts.'' We believe it likewise reasonable to conclude that, having provided the Commission with affirmative legal authority to take regulatory measures to further section 706's goals, Congress invested the Commission with the authority to enforce those measures as needed to ensure those goals are achieved. Indeed, some have suggested that the Commission could take enforcement action pursuant to section 706 itself, without adopting rules.

### *G. Other Laws and Considerations*

299. In the *2014 Open Internet NPRM,* the Commission tentatively concluded that it should retain provisions which make clear that the open Internet rules do not alter broadband providers' rights or obligations with respect to other laws, safety and security considerations, or the ability of broadband providers to make reasonable efforts to address transfers of unlawful content and unlawful transfers of content. We affirm this tentative conclusion and reiterate today that our rules are not intended to expand or contract broadband providers' rights or obligations with respect to other laws or safety and security considerations—including the needs of emergency communications and law enforcement, public safety, and national security authorities. Similarly, open Internet rules protect only *lawful* content, and are not intended to inhibit efforts by broadband providers to address unlawful transfers of content or transfers of unlawful content.

1. Emergency Communications and Safety and Security Authorities

300. In the *2010 Open Internet Order* we adopted a rule that acknowledges the ability of broadband providers to serve the needs of law enforcement and the needs of emergency communications and public safety, national, and homeland security authorities. This rule remains in effect today. To make clear that open Internet protections coexist with other legal frameworks governing the needs of safety and security authorities, we retain this rule, which reads as follows:

*Nothing in this part supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.*

301. In retaining this rule, we reiterate that the purpose of the safety and security provision is first to ensure that open Internet rules do not restrict broadband providers in addressing the needs of law enforcement authorities, and second to ensure that broadband providers do not use the safety and security provision without the imprimatur of a law enforcement authority, as a loophole to the rules. Application of the safety and security rule should be tied to invocation by relevant authorities rather than to a broadband provider's independent notion of the needs of law enforcement.

302. The record is generally supportive of our proposal to reiterate that open Internet rules do not supersede any obligation a broadband provider may have—or limit its ability—to address the needs of emergency communications or law enforcement, public safety, or homeland or national security authorities (together, ''safety and security authorities''). Broadband providers have obligations under statutes such as the Communications Assistance for Law Enforcement Act, the Foreign Intelligence Surveillance Act, and the Electronic Communications Privacy Act that could in some circumstances intersect with open Internet protections. Likewise, in connection with an emergency, there may be federal, state, tribal, and local public safety entities, homeland security personnel, and other authorities that need guaranteed or prioritized access to the Internet in order to coordinate disaster relief and other emergency response efforts, or for other emergency communications. Most commenters recognize the benefits of clarifying that these obligations are not inconsistent with open Internet rules.

303. Some commenters have proposed revisions to the existing rule which would expand its application to public utilities and other critical infrastructure operators. Because we make sufficient accommodation for these concerns elsewhere, we choose not to modify this provision to include critical infrastructure.

2. Transfers of Unlawful Content and Unlawful Transfers of Content

304. In the *NPRM,* we tentatively concluded that we should retain the definition of reasonable network management we previously adopted, which does not include preventing transfer of unlawful content or the unlawful transfer of content as a reasonable practice. We affirm this tentative conclusion and re-state that open Internet rules do not prohibit broadband providers from making reasonable efforts to address the transfer of unlawful content or unlawful transfers of content to ensure that open Internet rules are not used as a shield to enable unlawful activity or to deter prompt action against such activity. For example, the no-blocking rule should not be invoked to protect copyright infringement, which has adverse consequences for the economy, nor should it protect child pornography. We reiterate that our rules do not alter the copyright laws and are not intended to prohibit or discourage voluntary practices undertaken to address or mitigate the occurrence of copyright infringement. After consideration of the record, we retain this rule, which is applicable to both fixed and mobile broadband providers engaged in broadband Internet access service and reads as follows:

*Nothing in this part prohibits reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity.*

305. Some commenters contend that this rule promotes the widespread use of intrusive packet inspection technologies by broadband providers to filter objectionable content and that such monitoring poses a threat to customers' privacy rights. Certainly, many broadband providers have the technical tools to conduct deep packet inspection of unencrypted traffic on their networks, and consumer privacy is a paramount concern in the Internet age. Nevertheless, we believe that broadband monitoring concerns are adequately addressed by the rules we adopt today, so we decline to alter this provision. This rule is limited to protecting ''*reasonable* efforts . . . to address copyright infringement or other unlawful activity.'' We retain the discretion to evaluate the reasonableness of broadband providers' practices under this rule on a case-by-case basis. Consumers also have many tools at their disposal to protect their privacy against deep packet inspection—including SSL encryption, virtual private networks, and routing methods like TOR. Further, the complaint processes we adopt today add to these technical methods and advance consumer interests in this area.

## IV. Declaratory Ruling: Classification of Broadband Internet Access Services

306. The *Verizon* court upheld the Commission's use of section 706 as a substantive source of legal authority to adopt open Internet protections. But it held that, ''[g]iven the Commission's still-binding decision to classify broadband providers . . . as providers of 'information services,' '' open Internet protections that regulated broadband providers as common carriers would violate the Act. Rejecting the Commission's argument that broadband providers only served retail consumers, the *Verizon* court went on to explain that ''broadband providers furnish a service to edge providers, thus undoubtedly functioning as edge providers' 'carriers,' '' and held that the 2010 no-blocking and no-unreasonable discrimination rules impermissibly ''obligated [broadband providers] to act as common carriers.''

307. The *Verizon* decision thus made clear that section 706 affords the Commission with substantive authority and that open Internet protections are within the scope of that authority. And this Order relies on section 706 for the open Internet rules. But, in light of *Verizon,* absent a classification of broadband providers as providing a ''telecommunications service,'' the Commission may only rely on section 706 to put in place open Internet protections that steer clear of what the court described as common carriage *per se* regulation.

308. Taking the *Verizon* decision's implicit invitation, we revisit the Commission's classification of the retail broadband Internet access service as an information service (The Commission has previously classified cable modem Internet access service, wireline broadband Internet access service, and Broadband over Power Line (BPL)-enabled Internet access service as information services. The Commission has referred to these services as ''wired'' broadband Internet access services. The Commission has also previously

classified ''wireless'' broadband Internet access, which it defined as a service that ''uses spectrum, wireless facilities and wireless technologies to provide subscribers with high-speed (broadband) Internet access capabilities, . . . whether offered using mobile, portable, or fixed technologies,'' as information services) and clarify that this service encompasses the so-called ''edge service.'' Based on the updated record, we conclude that retail broadband Internet access service is best understood today as an offering of a ''telecommunications service.'' (As discussed in greater detail below, our classification decision arises from our reconsideration of past interpretations and applications of the Act. We thus conclude that the classification decisions in this Order appropriately apply only on a prospective basis. *See, e.g., Verizon* v. *FCC,* 269 F.3d 1098 (D.C. Cir. 2001) (''In a case in which there is a substitution of new law for old law that was reasonably clear, a decision to deny retroactive effect is uncontroversial.'') (internal quotations omitted).)

309. Below we discuss the history of the classification of broadband Internet access service, describe our rationale for revisiting that classification, and provide a detailed explanation of our reclassification of broadband Internet access service.

*A. History of Broadband Internet Classification*

310. Congress created the Commission ''[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication.'' section 2 of the Communications Act grants the Commission jurisdiction over ''all interstate and foreign communication by wire or radio.'' As the Supreme Court explained in the radio context, Congress charged the Commission with ''regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding'' and therefore intended to give the Commission sufficiently ''broad'' authority to address new issues that arise with respect to ''fluid and dynamic'' communications technologies. (*National Broadcasting Co., Inc.* v. *United States,* 319 U.S. 190, 219 (1943). The Court added that ''[i]n the context of the developing problems to which it was directed, the Act gave the Commission . . . expansive powers . . . [and] a comprehensive mandate.'') No one disputes that Internet access services are within the Commission's subject-matter jurisdiction and historically have been supervised by the Commission.

311. *The Computer Inquiries.* In 1966, the Commission initiated its *Computer Inquiries* ''to ascertain whether the services and facilities offered by common carriers are compatible with the present and anticipated communications requirements of computer users.'' In the decision known as *Computer I,* the Commission required ''maximum separation'' between large carriers that offered data transmission services subject to common carrier requirements and their affiliates that sold data processing services. Refining this approach, in *Computer II* and *Computer III* the Commission required telephone companies that provided ''enhanced services'' over their own transmission facilities to separate out and offer on a common carrier basis the transmission component underlying their enhanced services.

312. Commenters disagree about the significance of the *Computer Inquiries.* We believe the *Computer Inquiries* are relevant in at least two important respects. First, in *Computer II* the Commission distinguished ''basic'' from ''enhanced'' services, a distinction that Congress embraced when it adopted the Telecommunications Act of 1996. Basic services offered on a common carrier basis were subject to Title II; enhanced services were not. When Congress enacted the definitions of ''telecommunications service'' and ''information service'' in the Telecommunications Act of 1996, it substantially incorporated the ''basic'' and ''enhanced'' service classifications. Because the statutory definitions substantially incorporated the Commission's terminology under the *Computer Inquiries,* Commission decisions regarding the distinction between basic and enhanced services—in particular, decisions regarding features that are ''adjunct to basic'' services—are relevant in this proceeding. (The Commission's definition of ''adjunct to basic'' services has been instrumental in determining which functions fall within the ''telecommunications systems management'' exception to the ''information service'' definition.)

313. Second, the *Computer Inquiries* disprove the claim that the Commission has never before mandatorily applied Title II to the transmission component of Internet access service. (As discussed below, a large number of rural local exchange carriers (LECs) have also chosen to offer broadband transmission service as a telecommunications service subject to the provisions of Title II.) From 1980 to 2005, facilities-based telephone companies were obligated to offer the transmission component of their enhanced service offerings—including broadband Internet access service offered via digital subscriber line (DSL)—to unaffiliated enhanced service providers on nondiscriminatory terms and conditions pursuant to tariffs or contracts governed by Title II. There is no disputing that until 2005, Title II applied to the transmission component of DSL service.

314. *Prior Classification Decisions.* Several commenters, as well as the dissenting statements, claim that an unbroken line of Commission and court precedent, dating back to the *Stevens Report* in 1998, supports the classification of Internet access service as an information service, and that this classification is effectively etched in stone. These commenters ignore not only the Supreme Court but our precedent demonstrating that the relevant statutory definitions are ambiguous, and that classifying broadband Internet access service as a telecommunications service is a permissible interpretation of the Act. Indeed, several of the most vocal opponents of reclassification previously argued that the Commission not only may, but should, classify the transmission component of broadband Internet access service as a telecommunications service. (Contemporaneously, Verizon and the United States Telecom Association argued in the *Gulf Power* litigation before the Supreme Court that cable modem service includes a telecommunications service.)

315. To begin with, these commenters misconstrue the scope of the *Stevens Report,* which was a report to Congress concerning the implementation of universal service mandates, and not a binding Commission Order classifying Internet access services. Moreover, when the Commission issued that report, in 1998, broadband Internet access service was at ''an early stage of deployment to residential customers'' and constituted a tiny fraction of all Internet connections. Virtually all households with Internet connections used traditional telephone service to dial-up their Internet Service Provider (ISP), which was typically a separate entity from their telephone company. In the *Stevens Report,* the Commission

stated that Internet access service as it was then typically being provided was an ''information service.'' The *Stevens Report* reserved judgment on whether entities that provided Internet access over their own network facilities were offering a separate telecommunications service. The Commission further noted that ''the question may not always be straightforward whether, on the one hand, an entity is providing a single information service with communications and computing components, or, on the other hand, is providing two distinct services, one of which is a telecommunications service.'' A few months after sending the *Stevens Report* to Congress, the Commission concluded that ''[a]n end-user may utilize a telecommunications service together with an information service, as in the case of Internet access.'' In a follow-up order, the Commission affirmed its conclusion that ''xDSL-based advanced services constitute telecommunications services as defined by section 3(46) of the Act.'' (The definition of telecommunications service is now in section 3(53) of the Act, 47 U.S.C. 153(53). The *Advanced Services Remand Order* was vacated in part by the D.C. Circuit in *WorldCom* v. *FCC,* 246 F.3d 690 (D.C. Cir. 2001). Specifically, the D.C. Circuit vacated the remand of the Commission's classification of DSL-based advanced services as ''telephone exchange service'' or ''exchange access.'' ''Telephone exchange service'' and ''exchange access'' are relevant in determining whether a provider is a ''local exchange carrier.'' It has no bearing on the classification of a particular service offering as a telecommunications or information service under the Act. As such, the further history of the *Advanced Services Remand Order* is inapposite to the Commission's discussion of telecommunications and information services in that Order.)

316. The courts addressed the statutory classification of broadband Internet access service in June 2000, when the United States Court of Appeals for the Ninth Circuit held in *AT&T Corp.* v. *City of Portland* that cable modem service is a telecommunications service to the extent that the cable operator ''provides its subscribers Internet transmission over its cable broadband facility,'' and an information service to the extent the operator acts as a ''conventional'' ISP. The Ninth Circuit's decision thus put cable companies' broadband transmission service on a regulatory par with DSL transmission service. (In 2001, SBC Communications and BellSouth acknowledged the significance of the *Computer Inquiries,* the *Advanced Services Order,* and the Ninth Circuit's decision in *City of Portland:* ''The Commission currently views the DSL-enabled transmission path underlying incumbent LEC broadband Internet services as a 'telecommunications service' under the Act. As the Ninth Circuit recognized, the exact same logic applies to cable broadband: 'to the extent that [a cable ISP] provides its subscribers Internet transmission over its cable broadband facility, it is providing a telecommunications service as defined in the Communications Act.' '')

317. Three months later, the Commission issued the *Cable Modem Notice of Inquiry,* which sought comment on whether cable modem service should be treated as a telecommunications service under Title II or an information service subject to Title I. In response, the Bell Operating Companies (BOCs) unanimously argued that the Commission lawfully could determine that cable modem service includes a telecommunications service. Verizon and Qwest argued that the transmission component of cable modem service is a telecommunications service. SBC Communications and BellSouth (both now part of AT&T) argued that the Commission should classify cable modem service as an integrated information service subject to Title I, but acknowledged that the Commission could lawfully find that cable modem service includes both a telecommunications service and an information service. Verizon, SBC, and BellSouth also agreed that the Commission could adopt a ''middle ground'' legal framework by finding that cable modem service is, in part, a telecommunications service, but grant relief from pricing and tariffing obligations by either declaring all providers of broadband Internet access service to be nondominant or by forbearing from enforcing those obligations. (Cable operators generally argued that the Commission should classify cable modem service as either a cable service or an information service, but not as a telecommunications service.)

318. In March 2002, the Commission exercised its authority to interpret ambiguous language in the Act and addressed the classification of cable modem service in the *Cable Modem Declaratory Ruling.* The Commission stated that ''[t]he Communications Act does not clearly indicate how cable modem service should be classified or regulated.'' Based on a factual record that had been compiled at that time, the Commission described cable modem service as ''typically includ[ing] many and sometimes all of the functions made available through dial-up Internet access service, including content, email accounts, access to news groups, the ability to create a personal Web page, and the ability to retrieve information from the Internet.'' The Commission noted that cable modem providers often consolidated these functions ''so that subscribers usually do not need to contract separately with another Internet access provider to obtain discrete services or applications.'' (The Commission defined cable modem service as ''a service that uses cable system facilities to provide residential subscribers with high-speed Internet access, as well as many applications or functions that can be used with high-speed Internet access.'')

319. The Commission identified a portion of cable modem service as ''Internet connectivity,'' which it described as establishing a physical connection to the Internet and operating or interconnecting with the Internet backbone, and sometimes including protocol conversion, Internet Protocol (IP) address number assignment, DNS, network security, caching, network monitoring, capacity engineering and management, fault management, and troubleshooting. The *Ruling* also noted that ''[n]etwork monitoring, capacity engineering and management, fault management, and troubleshooting are Internet access service functions that . . . serve to provide a steady and accurate flow of information between the cable system to which the subscriber is connected and the Internet.'' The Commission distinguished these functions from ''Internet applications provided through cable modem services,'' including ''email, access to online newsgroups, and creating or obtaining and aggregating content,'' ''home pages,'' and ''the ability to create a personal Web page.''

320. The Commission found that cable modem service was ''an offering . . . which combines the transmission of data with computer processing, information provision, and computer interactivity, enabling end users to run a variety of applications.'' The Commission further concluded that, ''as it [was] currently offered,'' cable modem service as a whole met the statutory definition of ''information service'' because its components were best viewed as a ''single, integrated service that enables the subscriber to utilize Internet access service,'' with a telecommunications component that was ''not . . . separable from the data

processing capabilities of the service.'' Significantly, the Commission did not address whether DNS or any other features of cable modem service fell within the telecommunications systems management exception to the definition of ''information service'' as there was no reason to do so. The *Cable Modem Declaratory Ruling* also included a notice of proposed rulemaking seeking comment on, among other things, whether the Commission should require cable operators to give unaffiliated broadband Internet access service providers access to cable broadband networks.

321. In October 2003, the United States Court of Appeals for the Ninth Circuit vacated the Commission's finding that cable modem service is an integrated information service. The court concluded that it was bound by the prior decision in *City of Portland* that ''the transmission element of cable broadband service constitutes telecommunications service under the terms of the Communications Act.''

322. In 2005, the Supreme Court reversed the Ninth Circuit's decision and upheld the *Cable Modem Declaratory Ruling* in *Brand X.* The Court held that the word ''offering'' in the Communications Act's definitions of ''telecommunications service'' and ''information service'' is ambiguous, and that the Commission's finding that cable modem service is a functionally integrated information service was a permissible, though perhaps not the best, interpretation of the Act.

323. Following *Brand X,* the Commission issued the *Wireline Broadband Classification Order,* which applied the ''information services'' classification at issue in the *Cable Modem Declaratory Ruling* to facilities-based wireline broadband Internet access services as well and eliminated the resulting regulatory asymmetry between cable companies and telephone companies offering wired Internet access service via DSL and other facilities. The *Wireline Broadband Classification Order* based this decision on a finding that ''providers of wireline broadband Internet access service offer subscribers the ability to run a variety of applications'' that fit the definition of information services, including those that enable access to email and the ability to establish home pages. The Commission therefore concluded that ''[w]ireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service.'' The Commission also eliminated the *Computer Inquiry* requirements for wireline Internet access service. In 2006, the Commission issued the *BPL-Enabled Broadband Order,* which extended the information service classification to Internet access service provided over power lines.

324. Subsequently, in 2007 the Commission released the *Wireless Broadband Classification Order,* which determined that wireless broadband Internet access service was likewise an information service under the Communications Act. The *Wireless Broadband Classification Order* also found that although ''the transmission component of wireless broadband Internet access service is 'telecommunications' . . . the offering of the telecommunications transmission component as part of a functionally integrated Internet access service offering is not 'telecommunications service' under section 3 of the [Communications] Act.''

325. The *Wireless Broadband Classification Order* also considered the application of section 332 of Title III to wireless broadband Internet access service and concluded that ''mobile wireless broadband Internet access service does not meet the definition of 'commercial mobile service' within the meaning of section 332 of the Act as implemented by the Commission's CMRS rules because such broadband service is not an 'interconnected service,' as defined in the Act and the Commission's rules.''

326. In 2010, the D.C. Circuit rejected the Commission's attempt to enforce open Internet principles based on the Commission's Title I ancillary authority in *Comcast* v. *FCC.* Following *Comcast,* the Commission issued a Notice of Inquiry (*Broadband Classification NOI*) that sought comment on the appropriate approach to broadband policy in light of the D.C. Circuit's decision. Shortly thereafter, the Commission released the *2010 Open Internet Order.* The 2010 *Order* was based in part on a revised understanding of the Commission's Title I authority—as well as a variety of other statutory provisions including section 706—and was again challenged before the D.C. Circuit in *Verizon* v. *FCC.* Although the *Verizon* court accepted the Commission's reinterpretation of section 706 as an independent grant of legislative authority over broadband services, the court nonetheless vacated the no-blocking and antidiscrimination provisions of the *Order* as imposing *de facto* common carrier status on providers of broadband Internet access service in violation of the Commission's classification of those services as information services. (The Court also found that that authority did not allow the Commission to subject information services or providers of private mobile services to treatment as common carriers.)

327. In response to the *Verizon* decision, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*) seeking public input on the ''best approach to protecting and promoting Internet openness.'' Among other things, the *2014 Open Internet NPRM* asked for discussion of the proper legal authority on which to base open Internet rules. The Commission proposed to rely on section 706 of the Telecommunications Act of 1996, but at the same time stated that it would ''seriously consider the use of Title II of the Communications Act as the basis for legal authority.'' The *NPRM* sought comment on the benefits of both section 706 and Title II, and emphasized its recognition that ''both section 706 and Title II are viable solutions.''

### *B. Rationale for Revisiting the Commission's Classification of Broadband Internet Access Services*

328. We now find it appropriate to revisit the classification of broadband Internet access service as an information service. The Commission has steadily and consistently worked to protect the open Internet for the last decade, starting with the adoption of the *Internet Policy Statement* up through its recent *2014 Open Internet NPRM* following the D.C. Circuit's *Verizon* decision. Although the *Verizon* court accepted the Commission's interpretation of section 706 as an independent grant of authority over broadband services, it nonetheless vacated the no-blocking and antidiscrimination provisions of the *Open Internet Order.* As the *Verizon* decision explained, to the extent that conduct-based rules remove broadband service providers' ability to enter into individualized negotiations with edge providers, they impose *per se* common carrier status on broadband Internet access service providers, and therefore conflict with the Commission's prior designation of broadband Internet access services as information services. Thus, absent a finding that broadband providers were providing a ''telecommunications service,'' the D.C. Circuit's *Verizon* decision defined the bounds of the Commission's authority to adopt open Internet protections to those that do not amount to common carriage.

329. The *Brand X* Court emphasized that the Commission has an obligation to consider the wisdom of its

classification decision on a continuing basis. An agency's evaluation of its prior determinations naturally includes consideration of the law affecting its ability to carry out statutory policy objectives. As discussed above, the record in the *Open Internet* proceeding demonstrates that broadband providers continue to have the incentives and ability to engage in practices that pose a threat to Internet openness, and as such, rules to protect the open nature of the Internet remain necessary. To protect the open Internet, and to end legal uncertainty, we must use multiple sources of legal authority to protect and promote Internet openness, to ensure that the Internet continues to grow as a platform for competition, free expression, and innovation; a driver of economic growth; and an engine of the virtuous cycle of broadband deployment, innovation, and consumer demand. Thus, we now find it appropriate to examine how broadband Internet access services are provided today.

330. Changed factual circumstances cause us to revise our earlier classification of broadband Internet access service based on the voluminous record developed in response to the *2014 Open Internet NPRM.* In the 2002 *Cable Modem Declaratory Ruling,* the Commission observed that ''the cable modem service business is still nascent, and the shape of broadband deployment is not yet clear. Business relationships among cable operators and their service offerings are evolving.'' However, despite the rapidly changing market for broadband Internet access services, the Commission's decisions classifying broadband Internet access service are based largely on a factual record compiled over a decade ago, during this early evolutionary period. The premises underlying that decision have changed. As the record demonstrates and we discuss in more detail below, we are unable to maintain our prior finding that broadband providers are offering a service in which transmission capabilities are ''inextricably intertwined'' with various proprietary applications and services. Rather, it is more reasonable to assert that the ''indispensable function'' of broadband Internet access service is ''the connection link that in turn enables access to the essentially unlimited range of Internet-based services.'' This is evident, as discussed below, from: (1) Consumer conduct, which shows that subscribers today rely heavily on third-party services, such as email and social networking sites, even when such services are included as add-ons in the broadband Internet access provider's service; (2) broadband providers' marketing and pricing strategies, which emphasize speed and reliability of transmission separately from and over the extra features of the service packages they offer; and (3) the technical characteristics of broadband Internet access service. We also note that the predictive judgments on which the Commission relied in the *Cable Modem Declaratory Ruling* anticipating vibrant intermodal competition for fixed broadband cannot be reconciled with current marketplace realities.

*C. Classification of Broadband Internet Access Service*

331. In this section, we reconsider the Commission's prior decisions that classified wired and wireless broadband Internet access service as information services, and conclude that broadband Internet access service is a telecommunications service subject to our regulatory authority under Title II of the Communications Act regardless of the technological platform over which the service is offered. (A ''telecommunications service'' is ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' 47 U.S.C. 153(53). ''Telecommunications'' is ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' *Id.* 153(50).) We both revise our prior classifications of wired broadband Internet access service and wireless broadband Internet access service, and classify broadband Internet access service provided over other technology platforms. In doing so, we exercise the well-established power of federal agencies to interpret ambiguous provisions in the statutes they administer. The Supreme Court summed up this principle in *Brand X:*

> In *Chevron,* this Court held that ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps, the Court explained, involves difficult policy choices that agencies are better equipped to make than courts. If a statute is ambiguous, and the implementing agency's construction is reasonable, Chevron requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation.

332. The Court's application of this *Chevron* test in *Brand X* makes clear our delegated authority to revisit our prior interpretation of ambiguous statutory terms and reclassify broadband Internet access service as a telecommunications service. The Court upheld the Commission's prior information services classification because ''the statute fails unambiguously to classify the telecommunications component of cable modem service as a distinct offering. This leaves federal telecommunications policy in this technical and complex area to be set by the Commission. . . .'' Where a term in the Act ''admit[s] of two or more reasonable ordinary usages, the Commission's choice of one of them is entitled to deference.'' The Court concluded, given the ''technical, complex, and dynamic'' questions that the Commission resolved in the *Cable Modem Declaratory Ruling,* ''[t]he Commission is in a far better position to address these questions than we are.''

333. Furthermore, reading the *Brand X* majority, concurring, and dissenting opinions together, it is apparent that most, and perhaps all, of the nine Justices believed that it would have been at least permissible under the Act to have classified the transmission service included with wired Internet access service as a telecommunications service. Justice Thomas, writing for the majority, noted that ''our conclusion that it is *reasonable* to read the Communications Act to classify cable modem service solely as an 'information service' leaves untouched *Portland's* holding that the Commission's interpretation is not the *best* reading of the statute.'' Justice Breyer concurred with Justice Thomas, stating that he ''believe[d] that the Federal Communications Commission's decision f[e]ll[ ] within the scope of its statutorily delegated authority,'' although ''perhaps just barely.'' And in dissent, Justice Scalia, joined by Justices Souter and Ginsburg, found that the Commission had adopted ''an implausible reading of the statute'' and that ''the telecommunications component of cable-modem service retains such ample independent identity'' that it could only reasonably be classified as a separate telecommunications service.

334. It is also well settled that we may reconsider, on reasonable grounds, the Commission's earlier application of the ambiguous statutory definitions of ''telecommunications service'' and ''information service.'' Indeed, in *Brand X,* the Supreme Court, in the specific context of classifying cable modem service, instructed the Commission to reexamine its application of the Communications Act to this service ''on a continuing basis'':

[I]f the agency adequately explains the reasons for a reversal of policy, ''change is not invalidating, since the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency.'' ''An initial agency interpretation is not instantly carved in stone. On the contrary, the agency . . . must consider varying interpretations and the wisdom of its policy on a continuing basis,'' for example, in response to changed factual circumstances, or a change in administrations. . . .

335. More recently, in *FCC* v. *Fox Television Stations, Inc.,* the Supreme Court emphasized that, although an agency must acknowledge that it is changing course when it adopts a new construction of an ambiguous statutory provision, ''it need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one. . . .'' Rather, it is sufficient that ''the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.'' We discuss in detail below why our conclusion that broadband Internet access service is a telecommunications service is well within our authority. Having determined that Congress gave the Commission authority to determine the appropriate classification of broadband Internet access service—and having provided sufficient justification of changed factual circumstances to warrant a reexamination of the Commission's prior classification—we find, upon interpreting the relevant statutory terms, that broadband Internet access service, as offered today, includes ''telecommunications,'' and falls within the definition of a ''telecommunications service.''

1. Scope

336. As discussed below, we conclude that broadband Internet access service is a telecommunications service. We define ''broadband Internet access service'' as a mass-market (By mass market, we mean services marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries. ''Schools'' would include institutions of higher education to the extent that they purchase these standardized retail services. *See* Higher Education and Libraries Comments at 11 (noting that institutions of higher education are not ''residential customers'' or ''small businesses'' and uncertainty about whether institutions of higher education (and their libraries) are included in the term ''schools'' because the term is sometimes interpreted as applying only to K through 12 schools). For purposes of this definition, ''mass market'' also includes broadband Internet access service purchased with the support of the E-rate, and Rural Healthcare programs, as well as any broadband Internet access service offered using networks supported by the Connect America Fund (CAF), but does not include enterprise service offerings or special access services, which are typically offered to larger organizations through customized or individually negotiated arrangements.) retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. (As explained above, *see supra* note, our use of the term ''broadband'' in this Order includes but is not limited to services meeting the threshold for ''advanced telecommunications capability.'') This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence. (The *Verizon* decision upheld the Commission's regulation of broadband Internet access service pursuant to section 706 and the definition of ''broadband Internet access service'' has remained part of the Commission's regulations since adopted in 2010. Certain parties have raised issues in the record regarding the regulatory status of mobile messaging services, *e.g.,* SMS/MMS. We note that the rules we adopt today prohibit broadband providers from, for example, blocking messaging services that are delivered over a broadband Internet access service. We decline to further address here arguments regarding the status of messaging within our regulatory framework, but instead plan to address these issues in the context of the pending proceeding considering a petition to clarify the regulatory status of text messaging services.)

337. The term ''broadband Internet access service'' includes services provided over any technology platform, including but not limited to wire, terrestrial wireless (including fixed and mobile wireless services using licensed or unlicensed spectrum), and satellite. (In classifying wireless broadband Internet access as an information service, the Commission excluded broadband provided via satellite from classification. Thus, our action here expressly classifies the service for the first time. We observe that while our classification includes broadband Internet access services provided using capacity over fixed or mobile satellite or submarine cable landing facilities, our classification of these services as telecommunications services or CMRS does not require changes to the authorizations for satellite earth stations, satellite space stations, or submarine cable landing facilities.) For purposes of our discussion, we divide the various forms of broadband Internet access service into the two categories of ''fixed'' and ''mobile,'' rather than between ''wired'' and ''wireless'' service. With these two categories of services—fixed and mobile—we intend to cover the entire universe of Internet access services at issue in the Commission's prior broadband classification decisions as well as all other broadband Internet access services offered over other technology platforms that were not addressed by prior classification orders. We also make clear that our classification finding applies to all providers of broadband Internet access service, as we delineate them here, regardless of whether they lease or own the facilities used to provide the service. (The Commission has consistently determined that resellers of telecommunications services are telecommunications carriers, even if they do not own any facilities. Further, as the Supreme Court observed in *Brand X,* ''the relevant definitions do not distinguish facilities-based and non-facilities-based carriers.'') ''Fixed'' broadband Internet access service refers to a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user's home router, computer, or other Internet access device to the network. The term encompasses the delivery of fixed broadband over any medium, including various forms of wired broadband services (*e.g.,* cable, DSL, fiber), fixed wireless broadband services (including fixed services using unlicensed spectrum), and fixed satellite broadband services. ''Mobile'' broadband Internet access service refers to a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access includes, among other things, services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet. (We note that section 337(f)(1) of the Act excludes public safety services from the definition of mobile broadband Internet access service. 47 U.S.C. 337(f)(1).) The term also

encompasses mobile satellite broadband services.

338. In the *Verizon* opinion, the D.C. Circuit concluded that, in addition to the retail service provided to consumers, ''broadband providers furnish a service to edge providers, thus undoubtedly functioning as edge providers 'carriers.' '' It was because the court concluded that the Commission had treated this distinct service as common carriage, that it ''remand[ed] the case to the Commission for further proceedings consistent with this opinion.'' We conclude now that the failure of the Commission's analysis was a failure to explain that the ''service to edge providers'' is subsumed within the promise made to the retail customer of the BIAS service. For the reasons we review herein, the reclassification of BIAS necessarily resolves the edge-provider question as well. In other words, the Commission agrees that a two-sided market exists and that the beneficiaries of the non-consumer side either are or potentially could be all edge providers. Because our reclassification decision treats BIAS as a Title II service, Title II applies, as well, to the second side of the market, which is always a part of, and subsidiary to, the BIAS service. The *Verizon* court implicitly followed that analysis when it treated the classification of the retail end user service as controlling with respect to its analysis of the edge service; its conclusion that an edge service could be not be treated as common carriage turned entirely on its understanding that the provision of retail broadband Internet access services had been classified as ''information services.'' The reclassification of BIAS as a Title II service thus addresses the court's conclusion that ''the Commission would violate the Communications Act were it to regulate broadband providers as common carriers.''

339. Many commenters, while holding vastly different views on our reclassification of BIAS, are united in the view we need not reach the regulatory classification of the service that the *Verizon* court identified as being furnished to the edge. (We thus decline to adopt proposals identifying and classifying a separate service provided to edge providers that were presented in the record, and on which we sought comment, including those by Mozilla, the Center for Democracy and Technology, and Professors Wu and Narechania. We believe that our actions here adequately address the concerns raised by these proposals, consistent with both law and fact.) We agree. Our reclassification of the broadband Internet access service means that we can regulate, consistent with the Communications Act, broadband providers to the extent they are ''engaged'' in providing the broadband Internet access service. As discussed above, a broadband Internet access service provider's representation to its end-user customer that it will transport and deliver traffic to and from all or substantially all Internet endpoints necessarily includes the promise to transmit traffic to and from those Internet end points back to the user. Thus, the so-called ''edge service'' is secondary, and in support of, the promise made to the end user, and broadband provider practices with respect to edge providers—including terms and conditions for the transfer and delivery of traffic to (and from) the BIAS subscriber—impact the broadband provider's provision of the Title II broadband Internet access service. (This is not a novel arrangement. Under traditional contract principles, Party A (a broadband provider) can contract with Party B (a consumer) to provide services to Party C (an edge provider). That the service is being provided to Party C does not, in any way, conflict with the legal conclusion that the terms and conditions under which that service is being provided are governed by the agreement—and here the regulatory framework— between Parties A and B. Most content that flows across the broadband provider's ''last-mile'' network to the retail consumer does not involve a direct agreement between Parties B and C but, as the *Verizon* court observed, an edge provider, like Amazon, could enter into an agreement with a broadband provider, like Comcast.) For example, where an edge provider attempts to purchase favorable treatment for its traffic (such as through zero rating), that treatment would be experienced by the BIAS subscriber (such as through an exemption of the edge-provider's data from a usage limit) and the impact on the BIAS subscriber, if any, would be assessed under Title II. That is, the legal question before the Commission turns on whether the provision of that service to the edge provider would be inconsistent with the provision of the retail service under Title II. That is because the same data is flowing between end user and edge consumer. (This conclusion does not contradict the economic view that a broadband provider is operating in a two-sided market. *See, e.g., supra* note. A newspaper looks the same whether viewed by an advertiser or a subscriber, even though their economic relationship with the newspaper publisher is different. Here the operation of the broadband Internet access service is so intertwined with the edge service so as to compel the conclusion that the BIAS reclassification controls any service that is being provided to an edge provider.) In other words, to the extent that it is necessary to examine a separate edge service, that service is simply derivative of BIAS, constitutes the same traffic, and, in any event, fits comfortably within the command that practices provided ''in connection with'' a Title II service that must themselves be just and reasonable.

340. Broadband Internet access service does not include virtual private network (VPN) services, content delivery networks (CDNs), hosting or data storage services, or Internet backbone services. The Commission has historically distinguished these services from ''mass market'' services and, as explained in the *2014 Open Internet NPRM,* they ''do not provide the capability to transmit data to and receive data from all or substantially all Internet endpoints.'' (In classifying broadband Internet access service as a telecommunications service today, the Commission does not, and need not, reach the question of whether and how these services are classified under the Communications Act.) We do not disturb that finding here. Finally, we observe that to the extent that coffee shops, bookstores, airlines, private end-user networks such as libraries and universities, and other businesses acquire broadband Internet access service from a broadband provider to enable patrons to access the Internet from their respective establishments, provision of such service by the premise operator would not itself be considered a broadband Internet access service unless it was offered to patrons as a retail mass market service, as we define it here. Likewise, when a user employs, for example, a wireless router or a Wi-Fi hotspot to create a personal Wi-Fi network that is not intentionally offered for the benefit of others, he or she is not offering a broadband Internet access service, under our definition, because the user is not marketing and selling such service to residential customers, small business, and other end-user customers such as schools and libraries.

2. The Market Today: Current Offerings of Broadband Internet Access Service

341. We begin our analysis by examining how broadband Internet access service was and currently is offered. In the 2002 *Cable Modem Declaratory Ruling,* the Commission observed that ''the cable modem service business is still nascent, and the shape

of broadband deployment is not yet clear. Business relationships among cable operators and their service offerings are evolving.'' Despite the rapidly changing market for broadband Internet access services, the Commission's decisions classifying broadband Internet access service are based largely on a factual record compiled over a decade ago, during this early evolutionary period. The record in this proceeding leads us to the conclusion that providers today market and offer consumers separate services that are best characterized as (1) a broadband Internet access service that is a telecommunications service; and (2) ''add-on'' applications, content, and services that are generally information services.

342. In the past, the Commission has identified a number of ways to determine what broadband providers ''offer'' consumers. In the *Cable Modem Declaratory Ruling,* for example, the Commission concluded that ''the classification of cable modem service turns on the *nature of the functions* that the end user is offered.'' In the *Wireline Broadband Classification Order,* the Commission noted that ''whether a telecommunications service is being provided turns on *what* the entity is 'offering . . . to the public,' and *customers' understanding* of that service.'' In the *Wireless Broadband Classification Order,* the Commission stated that ''[a]s with both cable and wireline Internet access, [the] definition appropriately focuses on the end user's experience, factoring in both the functional characteristics and speed of transmission associated with the service.'' Similarly, in *Brand X,* both the majority and dissenting opinions examined how consumers perceive and use cable modem service, technical characteristics of the services and how it is provided, and analogies to other services.

a. Broadband Internet Access Services at Time of Classification

343. *''Wired'' Broadband Services.* The Commission's *Cable Modem Declaratory Ruling* described cable modem service as ''typically includ[ing] many and sometimes all of the functions made available through dial-up Internet access service, including content, email accounts, access to news groups, the ability to create a personal Web page, and the ability to retrieve information from the Internet, including access to the World Wide Web.'' The Commission also identified functions provided with cable modem service that it called ''Internet connectivity functions.'' (Earlier, in its 2001 AOL/Time Warner merger order describing the emerging high speed Internet access services offered through cable modems, the Commission found that ''Internet access services consist principally of connectivity to the Internet provided to end users.'') These included establishing a physical connection to the Internet and interconnecting with the Internet backbone, protocol conversion, Internet Protocol address number assignment, domain name resolution through DNS, network security, caching, network monitoring, capacity engineering and management, fault management, and troubleshooting. In addition, the Commission noted that ''[n]etwork monitoring, capacity engineering and management, fault management, and troubleshooting are Internet access service functions that . . . . serve to provide a steady and accurate flow of information between the cable system to which the subscriber is connected and the Internet.'' The *Ruling* noted that ''[c]omplementing the Internet access functions are *Internet applications* provided *through* cable modem service. These applications include traditional ISP services such as email, access to online newsgroups, and creating or obtaining and aggregating content. The cable modem service provider will also typically offer subscribers a 'first screen' or 'home page' and the ability to create a personal Web page.'' The Commission explained that ''[e]-mail, newsgroups, the ability for the user to create a Web page that is accessible by other Internet users, and DNS are *applications* that are commonly associated with Internet access service,'' and that ''[t]aken together, they constitute an information service.'' In the *Wireline Broadband Classification Order,* the Commission found that end users subscribing to wireline broadband Internet access service ''*expect to receive* (and pay for) a finished, functionally integrated service that provides access to the Internet.''

344. The Commission's subsequent wired broadband classification decisions did not describe wired broadband Internet access services with any greater detail.

345. *Wireless Broadband Services.* In 2007, the Commission described wireless broadband Internet access service as a service ''that uses spectrum, wireless facilities and wireless technologies to provide subscribers with high-speed (broadband) Internet access capabilities.'' The Commission noted that ''many of the mobile telephone carriers that provide mobile wireless broadband service for mobile handsets offer a range of IP-based multimedia content and services—including ring tones, music, games, video clips and video streaming—that are specially designed to work with the small screens and limited keypads of mobile handsets. This content is typically sold through a carrier-branded, carrier-controlled portal.''

b. The Growth of Consumer Demand and Market Supply

346. The record in this proceeding reveals that, since we collected information to address the classification of cable modem service over a decade ago, the market for both fixed and mobile broadband Internet access service has changed dramatically. Between December 2000 and December 2013, the number of residential Internet connections with speeds over 200 kbps in at least one direction increased from 5.2 million to 87.6 million. In 2000, only 5 percent of American households had a fixed Internet access connection with speeds of over 200 kbps in at least one direction, as compared to approximately 72 percent of American households with this same connection today. Indeed, as of December 2013, 60 percent of households have a fixed Internet connection with minimum speeds of at least 3 Mbps/768 kbps. Moreover, between December 2009 and December 2013, the number of mobile handsets with a residential data plan with a speed of at least 200 kbps in one direction increased from 43.7 million to 159.2 million, a 265 percent increase. (In addition, the mobile residential figures may overstate residential handsets because mobile filers report the number of ''consumer'' handsets that are not billed to a corporate, non-corporate business, government, or institutional customer account, and thus could include handsets for which the subscriber is reimbursed by their employee.) By November 2014, 73.6 percent of the entire U.S. age 13+ population was communicating with smart phones, a figure which has continued to rise rapidly over the past several years. Cisco forecasts that by 2019, North America will have nearly 90 percent of its installed base converted to smart devices and connections, and smart traffic will grow to 97 percent of the total global mobile traffic. In 2013, the United States and Canada were home to almost 260 million mobile subscriptions for smartphones, mobile PCs, tablets, and mobile routers. In 2014, that number was expected to increase by 20 percent, to 300 million subscriptions; by 2020, to 450 million, or a population penetration rate of almost 124 percent. In addition, the explosion in the deployment of Wi-Fi technology in the past few years has

resulted in consumers increasingly using that technology to access third party content, applications, and services on the Internet, in connection with either a fixed broadband service or a mobile broadband service.

347. This widespread penetration of broadband Internet access service has led to the development of third-party services and devices and has increased the modular way consumers have come to use them. As more American households have gained access to broadband Internet access service, the market for Internet-based services provided by parties other than broadband Internet access providers has flourished. Consumers' appetite for third-party services has also received a boost from the shift from dial-up to broadband, as a high-speed connection makes the Internet much more useful to consumers. (For example, early studies showed that broadband users are far more likely than dial-up users to go online to seek out news, look for travel information, share computer files with others, create content, and download games and videos.) The impact of broadband on consumers' demand for third-party services is evident in the explosive growth of online content and application providers. In early 2003, a year after the *Cable Modem Declaratory Ruling,* there were approximately 36 million Web sites. Today there are an estimated 900 million. When the Commission assessed the cable modem service market in the *Cable Modem Declaratory Ruling,* the service at issue was offered with various online applications, including email, newsgroups, and the ability to create a Web page. The Commission observed that subscribers to cable modem services ''usually d[id] not need to contract separately'' for ''discrete services or applications'' such as email. Today, broadband service providers still provide various Internet applications, including email, online storage, and customized homepages, in addition to newer services such as music streaming and instant messaging. But consumers are very likely to use their high-speed Internet connections to take advantage of competing services offered by third parties.

348. For example, companies such as Google and Yahoo! offer popular alternatives to the email services provided to subscribers as part of broadband Internet access service packages. According to Experian, Gmail and Yahoo! Mail were among the ten Internet sites most frequently visited during the week of January 17, 2015, with approximately 400 million and 350 million visits respectively. Some parties even advise consumers specifically *not* to use a broadband provider-based email address; because a consumer cannot take that email address with them if he or she switches providers, some assert that using a broadband provider-provided email address results in a disincentive to switch to a competitive provider due to the attendant difficulties in changing an email address. Third-party alternatives are also widely available for other services that may be provided along with broadband Internet access service. (DNS, caching, and other services that enable the efficient transmission of data over broadband connections are considered in section IV.C.3. below.) For example, firms such as Apple, Dropbox, and Carbonite provide ''cloud-based'' storage; services like Go Daddy provide Web site hosting; users rely on companies such as WordPress and Tumblr to provide blog hosting; and firms such as Netvibes and Yahoo! provide personalized homepages. GigaNews and Google provide access to newsgroups, while many broadband providers have themselves ceased offering this service entirely.

349. More generally, both fixed and mobile consumers today largely use their broadband Internet access connections to access content and services that are unaffiliated with their broadband Internet access service provider. In this regard, perhaps the most significant trend is the growing popularity of third-party video streaming services. By one estimate, Netflix and YouTube alone account for 50 percent of peak Internet download traffic in North America. Other sites among the most popular in the United States include the search engines Google and Yahoo!; social networking sites Facebook and LinkedIn; e-commerce sites Amazon, eBay and Craigslist; the user-generated reference site Wikipedia; a diverse array of user-generated media sites including Reddit, Twitter, and Pinterest; and news sources such as nytimes.com and CNN.com. Overall, broadband providers themselves operate very few of the Web sites that broadband Internet access services are most commonly used to access.

350. Thus, as a practical matter, broadband Internet access service is useful to consumers today primarily as a conduit for reaching modular content, applications, and services that are provided by unaffiliated third parties. As the Center for Democracy & Technology puts it, ''[t]he service that broadband providers offer to the public is widely understood today, by both the providers and their customers, as the ability to connect to anywhere on the Internet—to any of the millions of Internet endpoints—for whatever purposes the user may choose.'' (CDT contrasts the current state of affairs with an earlier time ''when Internet access service providers sought to differentiate themselves by offering 'walled gardens' of proprietary content and users looked to their access provider to serve as a kind of curator of the chaos of the Internet.'') Indeed, the ability to transmit data to and from Internet endpoints has become the ''one indispensable function'' that broadband Internet access service uniquely provides.

c. Marketing

351. That broadband Internet access services today are primarily offerings of Internet connectivity and transmission capability is further evident by how these services are marketed and priced. Commenters cite numerous examples of advertisements that emphasize transmission speed as the predominant feature that characterizes broadband Internet access service offerings. For example, Comcast advertises that its XFINITY Internet service offers ''the consistently fast speeds you need, even during peak hours,'' and RCN markets its high-speed Internet service as providing the ability ''to upload and download in a flash.'' Verizon claims that ''[w]hatever your life demands, there's a Verizon FiOS plan with the perfect upload/download speed for you,'' while the name of Verizon's DSL-based service is simply ''High Speed Internet.'' Furthermore, fixed broadband providers use transmission speeds to classify tiers of service offerings and to distinguish their offerings from those of competitors. AT&T U-Verse, for instance, offers four ''Internet Package[s]'' at different price points, differentiated in terms of the ''Downstream Speeds'' they provide. Verizon meanwhile asserts that ''the 100% fiber-optic network that powers FiOS'' enables ''a level of speed and capacity that cable can't always compete with—especially when it comes to upload speeds.'' On the mobile side, mobile broadband providers similarly emphasize transmission speed as well as reliability and coverage as factors that characterize their mobile broadband Internet access service offering. AT&T, for example, claims that it has the ''[n]ation's most reliable 4G LTE network'' and that what 4G LTE means is ''speeds up to 10x faster than 3G.'' Sprint advertises its ''Sprint Spark'' service as having its ''fastest ever data speeds and stronger in-building signal.''

352. The advertisements discussed above link higher transmission speeds

and service reliability with enhanced access to the Internet at large—to any ''points'' a user may wish to reach—not only to Internet-based applications or services that are provided in conjunction with broadband access. RCN, for instance, claims that its ''110 Mbps High-Speed Internet'' offering is ''ideal for watching Netflix,'' a third-party video streaming service. Verizon claims that FiOS's ''75/75 Mbps'' speed ''works well for uploading and sharing videos on YouTube and serious multi-user gaming'' presumably by using the FiOS service to access any combination of third-party and Verizon-affiliated content and services the user chooses. AT&T notes that its 4G LTE service ''lets you stream clear, crisp video faster than ever before, download songs in a few beats, apps almost instantly, and so much more.'' Broadband providers also market access to the Internet through Wi-Fi. Comcast, for example, notes that with its XFinity Internet services, subscribers can enjoy ''access to millions of hotspots nationwide and stay connected while away from home.'' T-Mobile advertises the ability to place calls and send messages over Wi-Fi.

353. Fixed and mobile broadband Internet access service providers also price and differentiate their service offerings on the basis of the quality and quantity of data transmission the offering provides. AT&T U-Verse, for instance, offers four ''Internet Package[s]'' at different price points, differentiated in terms of the ''Downstream Speeds'' they provide. On the mobile side, monthly data allowances—*i.e.,* caps on the amount of data a user may transmit to and from Internet endpoints—are among the features that factor most heavily in the pricing of service plans.

354. In short, broadband Internet access service is marketed today primarily as a conduit for the transmission of data across the Internet. (The marketing materials discussed here also indicate that broadband providers hold themselves out indifferently to the public when offering broadband Internet access service. Within particular service areas, broadband providers tend to offer uniform prices and services to potential customers. As discussed above, these offers are widely available through advertisements and marketing materials.) The record suggests that fixed broadband Internet access service providers market distinct service offerings primarily on the basis of the transmission speeds associated with each offering. Similarly, mobile providers market their service offerings primarily on the basis of the speed, reliability, and coverage of their network. Marketing broadband services in this way leaves a reasonable consumer with the impression that a certain level of transmission capability—measured in terms of ''speed'' or ''reliability''—is being offered in exchange for the subscription fee, even if complementary services are also included as part of the offer.

3. Broadband Internet Access Service Is a Telecommunications Service

355. We now turn to applying the statutory terms at issue in light of our updated understanding of how both fixed and mobile broadband Internet access services are offered. Three definitional terms are critical to a determination of the appropriate classification of broadband Internet access service. First, the Act defines ''telecommunications'' as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' Second, the Act defines ''telecommunications service'' as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' Finally, ''information service'' is defined in the Act as ''the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . . , but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'' We observe that the critical distinction between a telecommunications and an information service turns on what the provider is ''offering.'' If the offering meets the statutory definition of telecommunications service, then the service is also necessarily a common carrier service.

356. In reconsidering our prior decisions and reaching a different conclusion, we find that this result best reflects the factual record in this proceeding, and will most effectively permit the implementation of sound policy consistent with statutory objectives. For the reasons discussed above, we find that broadband Internet access service, as offered by both fixed and mobile providers, is best seen, and is in fact most commonly seen, as an offering (in the words of Justice Scalia, dissenting in *Brand X*) ''consisting of two separate things'': ''*Both* 'high-speed access to the Internet' *and* other 'applications and functions.' '' Although broadband providers in many cases provide broadband Internet access service along with information services, such as email and online storage, we find that broadband Internet access service is today sufficiently independent of these information services that it is a separate ''offering.'' We also find that domain name service (DNS) (DNS is most commonly used to translate domain names, such as ''nytimes.com,'' into numerical IP addresses that are used by network equipment to locate the desired content.) and caching, (Caching is the storing of copies of content at locations in a network closer to subscribers than the original source of the content. This enables more rapid retrieval of information from Web sites that subscribers wish to see most often.) when provided with broadband Internet access services, fit squarely within the telecommunications systems management exception to the definition of ''information service.'' (Hereinafter, we refer to this exception as the ''telecommunications systems management'' exception.) Thus, when provided with broadband Internet access services, these integrated services do not convert broadband Internet access service into an information service. (One of the dissenting statements asserts that Congress could not have delegated to the Commission the authority to determine whether broadband Internet access service is a telecommunications service because ''[h]ad Internet access service been a basic service, dominant carriers could have offered it (and all related computer-processing functionality) outside the parameters of the *Computer Inquiries,''* but ''I cannot find a single suggestion that anyone in Congress, anyone at the FCC, anyone in the courts, or anyone at all thought this was the law during the passage of the Telecommunications Act'' in 1996. *See* Pai Dissent at 37. We disagree with this line of reasoning. First, it contradicts the Supreme Court's 2005 holding in *Brand X,* where the Court explicitly acknowledged that the Commission had previously classified the transmission service, which broadband providers offer, as a telecommunications service and that the Commission could return to that classification if it provided an adequate justification. Second, and underscoring the ambiguity that the *Brand X* court identified in finding that the Commission had *Chevron* deference in its classification of broadband Internet access service, the dissenting statement fails to identify any

compelling evidence that Congress thought broadband Internet access service was an information service.)

357. *The Commission Does Not Bear a Special Burden in This Proceeding.* Opponents of classifying broadband Internet access service as a telecommunications service advocate a narrow reading of the Supreme Court's decision in *Brand X.* They contend that the Court's decision to affirm the classification of cable modem service as an information service was driven by specific factual findings concerning DNS and caching, and argue that the Commission may not revisit its decision unless it can show that the facts have changed. Opponents also cite a passage from the Supreme Court's *Fox* decision suggesting that an agency must provide ''a more detailed justification than what would suffice for a new policy on a blank slate'' where the agency's ''new policy rests upon factual findings that contradict those which underlay its prior policy,'' or ''when its prior policy has engendered serious reliance interests that must be taken into account.''

358. We disagree with these commenters on both counts. The *Fox* court explained that in these circumstances, ''it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.'' As the D.C. Circuit more recently confirmed, ''[t]his does not . . . equate to a 'heightened standard' for reasonableness.'' The Commission need only show ''that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better.'' Above, we more than adequately explain our changed view of the facts and circumstances in the market for broadband Internet access services—which is evident from consumers' heavy reliance on third-party services and broadband Internet access providers' emphasis on speed and reliability of transmission separately from and over the extra features of the service packages they offer. Furthermore, our understanding of the facts of how the elements of broadband Internet access service work has not changed. No one has ever disputed what DNS is or how it works. The issue is whether it falls within the definition of ''information service'' or the telecommunications systems management exception. If the latter, as we find below, prior factual findings that DNS was inextricably intertwined with the transmission feature of cable modem service do not provide support for the conclusion that cable modem service is an integrated information service.

359. Moreover, opponents' reading of *Brand X* ignores the reasoning and holding of the Court's opinion overall. As discussed above, the *Brand X* opinion confirms that the Supreme Court viewed the statutory classification of cable modem service as a judgment call for the Commission to make. If the Commission had concluded that the transmission component of cable modem service was a telecommunications service, and provided a reasoned explanation for its decision, it is evident that the Court would have deferred to that finding.

360. In *Fox,* the Supreme Court also suggested that an agency may need to provide ''a more detailed justification'' for a change in policy when the prior policy ''has engendered serious reliance interests.'' Opponents of reclassification contend that broadband providers have invested billions of dollars to deploy new broadband network facilities in reliance on the Title I classification decisions and it would be unreasonable to change course now. We disagree. As a factual matter, the regulatory status of broadband Internet access service appears to have, at most, an indirect effect (along with many other factors) on investment. Moreover, the regulatory history regarding the classification of broadband Internet access service would not provide a reasonable basis for assuming that the service would receive sustained treatment as an information service in any event. As noted above, the history of the *Computer Inquiries* indicates that, at a minimum the regulatory status of these or similar offerings involved a highly regulated activity for many years. The first formal ruling on the classification of broadband Internet access service came from the Ninth Circuit in 2000, which held that the best reading of the relevant statutory definitions was that cable modem service in fact includes a telecommunications service. The *Cable Modem Declaratory Ruling* was expressly limited to cable modem service ''as it [was] currently offered.'' The lawfulness of the Commission's 2002 *Cable Modem Declaratory Ruling* remained unsettled until the Supreme Court affirmed it in 2005, and the Commission's *Wireline Broadband Classification Order* was not affirmed until two years later, in 2007. In 2010, the Commission sought comment on reclassifying broadband Internet access services, and sought to refresh the record again in 2014. While the Commission did classify wireless broadband Internet access service as an information service in 2007, the *Comcast* and *Verizon* decisions, in 2009 and 2014 respectively, called into doubt the Commission's ability to rely upon its Title I ancillary authority to protect the public interest and carry out its statutory duties to promote broadband investment and deployment. The legal status of the information service classification thus has been called into question too consistently to have engendered such substantial reliance interests that our reclassification decision cannot now be sustained absent extraordinary justifications. Finally, the forbearance relief we grant in the accompanying order in conjunction with our reclassification decision keeps the scope of our proposed regulatory oversight within the same general boundaries that the Commission earlier anticipated drawing under its Title I authority. We thus reject the claims that our action here unlawfully upsets reasonable reliance interests. In any event, we provide in this ruling a compelling explanation of why changes in the marketing, pricing, and sale of broadband Internet access service, as well as the technical characteristics of how the service is offered, now justify a revised classification of the service. (In response to arguments raised in the dissenting statements, we clarify that, even assuming, *arguendo,* that the facts regarding how BIAS is offered had not changed, in now applying the Act's definitions to these facts, we find that the provision of BIAS is best understood as a telecommunications service, as discussed below, *see infra* sections IV.C.3.b., IV.C.3.c., and disavow our prior interpretations to the extent they held otherwise.)

a. Broadband Internet Access Service Involves Telecommunications

361. *Broadband Internet Access Service Transmits Information of the User's Choosing Between Points Specified by the User.* As discussed above, the Act defines ''telecommunications'' as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' It is clear that broadband Internet access service is providing ''telecommunications.'' Users rely on broadband Internet access service to transmit ''information of the user's choosing,'' ''between or among points specified by the user.'' Time Warner Cable asserts that broadband Internet access service cannot be a telecommunications service because—as end users do not know where online

content is stored—Internet communications allegedly do not travel to ''points specified by the user'' within the statutory definition of ''telecommunications.'' We disagree. We find that the term ''points specified by the user'' is ambiguous, and conclude that uncertainty concerning the geographic location of an endpoint of communication is irrelevant for the purpose of determining whether a broadband Internet access service is providing ''telecommunications.'' Although Internet users often do not know the geographic location of edge providers or other users, there is no question that users specify the end points of their Internet communications. (For example, in transmissions from the user to an edge provider, a user either directly specifies the domain name of the edge provider or utilizes a search engine to determine the domain name. The application that a user chooses then uses DNS to translate the domain name into an IP address associated with the edge provider, which is placed into the packet as its destination. For transmissions from an edge provider to a user, the edge provider places the user's IP address into the packet as the destination IP address.) Consumers would be quite upset if their Internet communications did not make it to their intended recipients or the Web site addresses they entered into their browser would take them to unexpected Web pages. Likewise, numerous forms of telephone service qualify as telecommunications even though the consumer typically does not know the geographic location of the called party. These include, for example, cell phone service, toll free 800 service, and call bridging service. In all of these cases, the user specifies the desired endpoint of the communication by entering the telephone number or, in the case of broadband Internet access service, the name or address of the desired Web site or application. More generally, we have never understood the definition of ''telecommunications'' to require that users specify—or even know—information about the routing or handling of their transmissions along the path to the end point, nor do we do so now. Further, that there is not a one-to-one correspondence between IP addresses and domain names, and that DNS often routes the same domain name to different locations based on its inference of which location is most likely to be the one the end user wants, does not alter this analysis. It is not uncommon in the toll-free arena for a single number to route to multiple locations, and such a circumstance does not transform that service to something other than telecommunications.

362. *Information is Transmitted Without Change in Form or Content.* Broadband Internet access service may use a variety of protocols to deliver content from one point to another. However, the packet payload (*i.e.,* the content requested or sent by the user) is not altered by the variety of headers that a provider may use to route a given packet. The information that a broadband provider places into a packet header as part of the broadband Internet access service is for the management of the broadband Internet access service and it is removed before the packet is handed over to the application at the destination. Broadband providers thus move packets from sender to recipient without any change in format or content, and ''merely transferring a packet to its intended recipient does not by itself involve generating, acquiring, transforming, processing, retrieving, utilizing, or making available information.'' (A BIAS provider, when utilizing the Internet Protocol, may fragment packets into multiple pieces. However, such fragmentation does not change the form or content, as the pieces are reassembled before the packet is handed over to the application at the destination.) Rather, ''it is the nature of [packet delivery] that the 'form and content of the information' is precisely the same when an IP packet is sent by the sender as when that same packet is received by the recipient.'' (For example, when a person sends an email, he or she expects that the content of the email, and any attachments, to be delivered to the recipient unaltered in content or form. We note that a user may choose to use an application, such as email, that is a separate information service offered by the BIAS provider. When this occurs, the provider of the information service may place information into the packet payload that changes the form or content. However, this change in form or content is purely implemented as part of the separable information service. The broadband provider, in transmitting the packet via BIAS, does not alter the form or content of the packet payload.)

b. Broadband Internet Access Service Is a ''Telecommunications Service''

363. Having affirmatively determined that broadband Internet access service involves ''telecommunications,'' we also find that broadband Internet access service is a ''telecommunications service.'' A ''telecommunications service'' is the ''offering of telecommunications for a fee directly to the public, . . . regardless of the facilities used.'' We find that broadband Internet access service providers offer broadband Internet access service ''directly to the public.'' As discussed above, the record indicates that broadband providers routinely market broadband Internet access services widely and to the general public. Because a provider is a common carrier ''by virtue of its functions,'' we find that such offerings are made directly to the public within the Act's definition of telecommunications service. We draw this conclusion based upon the common circumstances under which providers offer the service, and we reject the suggestion that we must evaluate such offerings on a narrower carrier-by-carrier or geographic basis. Further, that some broadband providers require potential broadband customers to disclose their addresses and service locations before viewing such an offer does not change our conclusion. The Commission has long maintained that offering a service to the public does not necessarily require holding it out to all end users. Some individualization in pricing or terms is not a barrier to finding that a service is a telecommunications service. (To the extent our prior precedents might suggest otherwise, we disavow such an interpretation in this context.)

364. In addition, the implied promise to make arrangements for exchange of Internet traffic as part of the offering of broadband Internet access service does not constitute a private carriage arrangement. (Commission precedent ''holds that a carrier will not be a common carrier 'where its practice is to make individualized decisions in particular cases whether and on what terms to serve.' '') First, in offering broadband Internet access service to its end-user customers, the broadband provider has voluntarily undertaken an obligation to arrange to transfer that traffic on and off its network. Broadband providers hold themselves out to carry all edge provider traffic to the broadband provider's end user customers regardless of source and regardless of whether the edge provider itself has a specific arrangement with the broadband provider. Merely asserting that the traffic exchange component of the service may have some individualized negotiation does not alter the nature of the underlying service. Second, the record reflects that broadband providers assert that multiple routes to reach their networks are widely and readily available. They cannot, at the same time, assert that all arrangements for delivering traffic to their end-user subscribers are

individually negotiated with every edge provider. Third, the record reflects that the majority of arrangements for traffic exchange are informal handshake agreements without formalized terms and conditions that would indicate any kind of individualized negotiations. We recognize that there are some interconnection agreements that do contain more individualized terms and conditions. However, this circumstance is not inherently different from similarly individualized commercial agreements for certain enterprise broadband services, which the Commission has long held to be common carriage telecommunications services subject to Title II. That the individualized terms may be negotiated does not change the underlying fact that a broadband provider holds the *service* out directly to the public. As discussed above, it must necessarily do so, in order to offer and provide its broadband Internet access service. Further, we note that these types of individualized negotiations are analogous to other telecommunications providers whose customer service representatives may offer variable terms and conditions to customers in circumstances where the customer threatens to switch service providers. We therefore find that the implied representation that broadband Internet access service providers will arrange for transport of traffic on and off their networks as part of the BIAS offering does not constitute private carriage. As such, we find that broadband Internet access service is offered ''directly to the public,'' and falls within the definition of ''telecommunications service.'' (If an offering meets the definition of telecommunications service, then the service is also necessarily a common carrier service.)

c. Broadband Internet Access Service Is Not an ''Information Service''

365. We further find that broadband Internet access service is not an information service. The Act defines ''information service'' as ''the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . . but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'' To the extent that broadband Internet access service is offered along with some capabilities that would otherwise fall within the information service definition, they do not turn broadband Internet access service into a functionally integrated information service. To the contrary, we find these capabilities either fall within the telecommunications systems management exception or are separate offerings that are not inextricably integrated with broadband Internet access service, or both.

366. *DNS Falls Within the Telecommunications Systems Management Exception to the Definition of Information Services.* As the Supreme Court spotlighted in *Brand X,* the Commission predicated its prior conclusion that cable modem service was an integrated information service at least in part on the view that it ''transmits data *only* in connection with the further processing of information.'' That was so, under the theory of the *Cable Modem Declaratory Ruling,* because ''[a] user cannot reach a third-party's Web site without DNS, which (among other things) matches the Web site address the end user types into his browser (or 'clicks' on with his mouse) with the IP address of the Web page's host server.'' The Commission had assumed without analysis that DNS, when provided with Internet access service, is an information service. The Commission credited record evidence that DNS ''enable[s] routing'' and that ''*[w]ithout this service, Internet access would be impractical for most users.''* In his *Brand X* dissent, however, Justice Scalia correctly observed that DNS ''is scarcely more than *routing* information, which is expressly excluded from the definition of 'information service' '' by the telecommunications systems management exception set out in the last clause of section 3(24) of the Act. (The definition of ''information service'' has since been moved from subsection 20 to subsection 24 of section 3 but has not itself been revised. The telecommunications systems management exception in section 3(24) provides that the term ''information service'' ''does not include'' the use of any data processing, storage, retrieval or similar capabilities ''for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'') Thus, in his view, such functions cannot be relied upon to convert what otherwise would be a telecommunications service into an information service. Therefore, consideration of whether DNS service falls within the telecommunications systems management exception could have been determinative in the Court's outcome in *Brand X,* had it considered the question.

367. Although the Commission assumed in the *Cable Modem Declaratory Ruling—sub silentio*—that DNS fell outside the telecommunications systems management exception, (The Commission's subsequent conclusions that wireline broadband services offered by telephone companies and broadband offered over power lines were unitary information services followed the same theory, also without any analysis of the telecommunications systems management exception.) Justice Scalia's assessment finds support both in the language of section 3(24), and in the Commission's consistently held view that ''adjunct-to-basic'' functions fall within the telecommunications systems management exception to the ''information service'' definition. (Throughout the history of computer-based communication, Title II covered more than just the simple transmission of data. Some features and services that met the literal definition of ''enhanced service,'' but did not alter the fundamental character of the associated basic transmission service, were considered ''adjunct-to-basic'' and treated as basic (*i.e.,* telecommunications) services even though they went beyond mere transmission. Thus, the Commission's definition of ''basic services'' (the regulatory predecessor to ''telecommunications services'') includes, among other things, those intelligent features that run the network or improve its usefulness to consumers, such as a carrier's use of ''companding [compressing/expanding] techniques, bandwidth compression techniques, circuit switching, message or packet switching, error control techniques, etc. that facilitate economical, reliable movement of information does not alter the nature of the basic service.'' Basic service can also include ''memory or storage within the network . . . used only to facilitate the transmission of the information from the origination to its destination,'') Such functions, the Commission has held: (1) Must be ''incidental'' to an underlying telecommunications service—*i.e.,* '' 'basic' in purpose and use'' in the sense that they facilitate use of the network; and (2) must ''not alter the fundamental character of [the telecommunications service].'' By established Commission precedent, they include ''speed dialing, call forwarding, [and] computer-provided directory assistance,'' each of which shares with DNS the essential characteristic of using computer processing to convert the number or keystroke that the end user enters into another number capable of routing the communication to the

intended recipient. Similarly, traditional voice telephone calls to toll free numbers, pay-per-call numbers, and ported telephone numbers require a database query to translate the dialed telephone number into a different telephone number and/or to otherwise determine how to route the call properly, and there is no doubt that the inclusion of that functionality does not somehow convert the basic telecommunications service offering into an information service. (Consider also the role that telephone operators traditionally played in routing telephone calls. Traditional telephony required a telephone operator to route and place calls requested by the customer. We do not believe that anyone would argue that such arrangements would turn traditional telephone service into an information service.)

368. Citing language from a staff decision to the effect that adjunct-to-basic functions do not include functions that are ''useful to end users, rather than carriers,'' AT&T argues that DNS must fall outside of the telecommunications systems management exception because ''Internet access providers use DNS functionality not merely (or even primarily) to 'manage' their networks more efficiently, but to make the Internet as a whole easily accessible and convenient *for their subscribers.''* We disagree. The particular function at issue in the cited staff decision—the ''storage and retrieval of information that emergency service personnel use to respond to E911 calls''—was not instrumental in placing calls or managing the communications network, but simply allowed certain telecommunications consumers (E911 answering centers and first responders) to identify the *physical location* of the distressed caller in order to render assistance, a benefit to be sure, but one unrelated to telecommunications. By contrast, DNS—like the speed dialing, call forwarding, and computer-provided directory assistance functions that already have been definitively classified as falling within the telecommunications systems management exception to section 3(24)—allows more efficient use of the telecommunications network by facilitating accurate and efficient routing from the end user to the receiving party. (Notwithstanding the close resemblance between DNS and these features that the Commission previously has found to be within the telecommunications systems management exception, USTelecom contends that ''DNS does not manage or control a telecommunications system or a telecommunications service.'' USTelecom Reply at 32. As with call forwarding, speed dialing, and computer-provided directory assistance, however, DNS manages the network in the sense of facilitating efficient routing and call completion. In any event, even if DNS were not viewed as facilitating network management, it clearly would fall within the exception as a capability used for the ''operation of a telecommunications system.'' 47 U.S.C. 153(24). Responding to assertions in one of the dissenting statements, (Pai Dissent at 36 through 37), we expressly find this rationale applies equally to other services that arguably serve the interests of subscribers, such as, for example, caching. While these services do provide a benefit to subscribers in the form of faster, more efficient service, they also serve to manage the network by facilitating efficient retrieval of requested information, reducing a broadband provider's costs in the provision of the service. In addition, caching and other services which provide a benefit to subscribers, like DNS, also serve as a capability used for the operation of a telecommunications system by enabling the efficient retrieval of information.)

369. AT&T's other arguments regarding DNS also fail. Contrary to its suggestion, the fact that the analogous speed dialing, call forwarding, and computer-provided directory assistance functions that the Commission has designated as falling within the telecommunications systems management exception were adjunct to ''legacy telephone ('basic') services'' rather than to ''Internet-based services'' provides no basis to discard the logic of that analysis in the broadband context. Nor are we persuaded by AT&T's observation that DNS systems provide additional ''reverse look-up'' functions (*i.e.,* converting a numeric IP address into a domain name) that are ''analogous to (though far more sophisticated than) 'reverse directory assistance' '' services that were deemed to be enhanced services in the legacy circuit-switched telephone service environment. Even assuming, *arguendo,* that such ''reverse look-up'' functions were analogous, we do not believe that the inclusion of such functionality would convert what was otherwise a telecommunications service into an information service. As the Supreme Court recognized, an entity may not avoid Title II regulation of its telecommunications service simply by packaging that service with an information service. As the Court explained, ''a telephone company that packages voice mail with telephone service offers a transparent transmission path—telephone service—that transmits information independent of the information-storage capabilities provided by voice mail. For instance, when a person makes a telephone call, his ability to convey and receive information using the call is only trivially affected by the additional voice-mail capability.'' Likewise, we find that to the extent a DNS ''reverse look-up'' functionality is included with the offering of broadband Internet access service, the service itself—the transmission of data to and from all or substantially all Internet endpoints—is only trivially dependent on, if at all, the ''reverse look-up'' function cited by AT&T. We find that this analysis applies equally to the DNS ''assist capabilities'' cited by AT&T, in which the provider's DNS functionality may also be used occasionally to guess what a user meant when she mistyped an address. (In the context of voice telephone service, the Commission has recognized that the availability of reverse directory capability does not transform that service from a telecommunications service into an information service.)

370. Although we find that DNS falls within the telecommunications systems management exception, even if did not, DNS functionality is not so inextricably intertwined with broadband Internet access service so as to convert the entire service offering into an information service. First, the record indicates that ''IP packet transfer does work just as well without DNS, but is simply less useful, just as a telephone system is less useful without a phone book.'' Indeed, ''[t]here is little difference between DNS support offered by a broadband Internet access provider and the 411 directory service offered by many providers of telephone service. Both allow a user to discover how to reach another party, but no one argued that telephone companies were not providing a telecommunications service because they offered 411.'' Second, the factual assumption that DNS lookup necessarily is provided *by the broadband Internet access provider* is no longer true today, if it ever was. While most users rely on their broadband providers to provide DNS lookup, the record indicates that third-party-provided-DNS is now widely available, (To be clear, we do not find that DNS is a telecommunications service (or part of one) when provided on a stand-alone basis by entities other than the provider of Internet access service. In such instances, there would be no telecommunications service to which DNS is adjunct, and the storage

functions associated with stand-alone DNS would likely render it an information service.) and the availability of the service from third parties cuts against a finding that Internet transmission and DNS are inextricably intertwined, whether or not they were at the time of the Commission's earlier classification decisions. In any event, the fact that DNS may be offered by a provider of broadband Internet access service does not affect our conclusion that the telecommunications is offered directly to the public.

371. Accordingly, we now reconsider our prior analysis and conclude for two reasons that the bundling of DNS by a provider of broadband Internet access service does not convert the broadband Internet access service offering into an integrated information service. (We also observe that add-on services to DNS, such as DNS security extensions, do not convert BIAS into an information service. DNS security extensions provide authentication that the messages sent between DNS servers, and between a DNS server and a DNS client, are not altered. As such, DNS security extensions facilitate accurate DNS information, and, like DNS itself, are incidental to BIAS, and do not alter the fundamental character of BIAS. We accordingly disagree with the contrary interpretation of the role of DNS security extensions described in one of the dissenting statements.) This is both because DNS falls within the telecommunications systems management exception to the definition of information service and because, regardless of its classification, it does not affect the fundamental nature of broadband Internet access service as a distinct offering of telecommunications.

372. *Caching Falls Within the Telecommunications Systems Management Exception.* Opponents of revisiting the Commission's earlier classification decisions also point to caching as another feature of broadband Internet access service packages that the Commission relied upon to find such packages to be information services. In the *Cable Modem Declaratory Ruling,* the Commission described caching as ''the storing of copies of content at locations in the network closer to subscribers than their original sources.'' While the Commission noted the caching function in the *Cable Modem Declaratory Ruling,* it did not rely on the caching function (as opposed to the DNS capability) as a basis for its classification determination. (To the extent that *Brand X* can be read as reaching a different conclusion, we find the Court's characterization of ''caching'' as enabling ''subscribers [to] reach third-party Web sites via the World Wide Web, and browse their contents, [only] because their service provider offers the capability for . . . acquiring, [storing] . . . retrieving [and] utilizing information'' to be technically inaccurate.) When offered as part of a broadband Internet access service, caching, like DNS, is simply used to facilitate the transmission of information so that users can access other services, in this case by enabling the user to obtain ''more rapid retrieval of information'' through the network. (Caching is akin to a ''store and forward technology [used] in routing messages through the network as part of a basic service.'') Thus, it falls easily within the telecommunications systems management exception to the information service definition. We observe that this caching function provided by broadband providers as part of a broadband Internet service, is distinct from third party caching services provided by parties other than the provider of Internet access service (including content delivery networks, such as Akamai), which are separate information services. (Third party ''content delivery networks'' provide extensive caching services. *See* Akamai Comments at 3 (explaining that it deploys its technologies deep in the networks of last-mile broadband Internet providers and caches content locally, and stating that it has deployed approximately 150,000 servers in thousands of locations inside over 1,200 global networks located in over 650 cities and 92 countries))

373. *Other Features Within the Telecommunications Systems Management Exception.* Opponents raise, as well, a variety of new network-oriented, security-related computer processing capabilities that are used to address broader threats to their broadband networks and customers, including the processing of Internet traffic to check for worms and viruses and features that block access to certain Web sites. They claim that, as with DNS, a consumer cannot utilize the service without also receiving many of these security mechanisms. Whether or not a consumer necessarily must utilize security-related blocking functions when using a provider's broadband Internet access service, we find that, like DNS and caching, such capabilities provide telecommunications systems management functions that do not transform what otherwise would be a telecommunications service into an information service. Some security functions, *e.g.,* blocking denial of service attacks, fall within the telecommunications systems management exception because they are used exclusively for the management, control, or operation of the telecommunications system. Many such network security functions are analogs of outbound and inbound ''call blocking'' services, such as those blocking calls to 900 and 976 numbers and those blocking calls from telemarketers, that have always been considered adjunct-to-basic with respect to voice telephony. Other security functions—firewalls and parental controls, for example—either fall within the telecommunications systems management exception because they are used exclusively for management of the telecommunication service or are separable information services that are offered by providers other than providers of broadband Internet access service. Such security features simply filter out unwanted traffic, and do not alter the fundamental character of the underlying telecommunications service offered to users. All of these functions ensure that users can use other Internet applications and services without worrying about interference from third parties.

374. CTIA contends that the integration between transmission and processing that characterizes mobile broadband Internet access service requires that it be classified as an information service, and notes that such integration is essential ''whether a user is browsing a Web site, engaged in mobile video conferencing, or undertaking any of the myriad other activities made possible by mobile broadband.'' We find that that, rather than transforming what otherwise would be a telecommunications service into an information service, the functions CTIA describes fall within the telecommunications management exception because they serve to facilitate the transmission of information and allow mobile subscribers to make use of other Internet applications and services. Other commenters contend that broadband providers' assignment of Internet Protocol (IP) addresses is also an information service that renders broadband Internet access service an information service. We disagree. IP address assignment is akin to telephone number assignment, making a user's computer locatable by other users on the network. Thus, this function serves to enable the transmission of information for the use of other services. The fact that the end user's equipment must periodically obtain an IP address from

the broadband provider's server does not change the fundamental purpose of the service. It is analogous to adjunct-to-basic services that the Commission has held fall squarely within the telecommunications systems management exception.

375. Finally, Comcast asserts that ''with the rise of IPv6 as the eventual replacement for IPv4 as the protocol for identifying and routing Internet content, Comcast and other [providers] also now provide the functionality necessary to transform an IPv4 address into an IPv6 address (and vice versa),'' a ''processing function'' it claims is ''part and parcel of broadband Internet access service.'' We conclude that, as with DNS functions, the IP conversion functionality is akin to traditional adjunct-to-basic services, which fall under the telecommunications systems management exception. As discussed above, such functions must be ''incidental'' to an underlying telecommunications service, and must not alter the fundamental character of the telecommunications service. We find that the conversion of IPv4 to IPv6 and vice versa does not alter the information being transmitted, but rather enables the transmission of the information, analogous to traditional voice telephone calls to toll free numbers, pay-per-call numbers, and ported telephone numbers that require a database query to translate the dialed telephone number into a different telephone number and/or to otherwise determine how to route the call properly. As with these traditional services, the inclusion of this functionality does not somehow convert the basic telecommunications service offering into an information service.

376. *Broadband Internet Access Service Is Not Inextricably Intertwined With Add-On Information Services.* Some commenters contend that broadband Internet access service must be a functionally integrated information service because it is offered in conjunction with information services, such as cloud-based storage services, email, and spam protection. We find that such services are not inextricably intertwined with broadband transmission service, but rather are a ''product of the [provider's] marketing decision not to offer the two separately.'' The transmission service provided by broadband providers is functionally distinguishable from the Internet application add-ons they provide. Service providers cannot avoid the scope of Title II merely by bundling broadband Internet access service with information services. As the Supreme Court majority in *Brand X* recognized, citing the *Stevens Report,* ''a company 'cannot escape Title II regulation' '' of a telecommunications service '''simply by packaging that service with voice mail' '' or similar information services.

377. We find that these services identified in the record—email, cloud-based storage, and spam protection—are separable information services. We conclude that email accounts and cloud-based storage provided along with broadband Internet access services are akin to voicemail services offered along with traditional telephone service. As the Court found, ''a telephone company that packages voice mail with telephone service offers a transparent transmission path—telephone service—that transmits information independent of the information-storage capabilities provided by voicemail . . . . [W]hen a person makes a telephone call, his ability to convey and receive information using the call is only trivially affected by the additional voice-mail capability.'' Likewise, the broadband Internet access service that consumers purchase is only trivially affected, if at all, by the email and cloud-based storage functionalities that broadband providers may offer with broadband Internet access service. Finally, security functions such as spam blocking are add-ons to separable information services such as email, and are themselves separable information services.

378. It is also notable that engineers view the Internet in terms of network ''layers'' that perform distinct functions. Each network layer provides services to the layer above it. Thus the lower layers, including those that provide transmission and routing of packets, do not rely on the services provided by the higher layers. In particular, the transmission of information of a user's choosing (which is a service offered by lower layers) does not depend on add-on information services such as cloud-based storage services, email, or spam protection (which are services offered at the application layer). Also, application layer services that fall within the telecommunications management exception (*e.g.,* DNS, caching, or security services offered as part of broadband Internet access service) similarly do not depend on add-on information services. As such, add-on information services are separated from the functions, like DNS, that facilitate transmission, and are not ''inextricably intertwined'' with broadband Internet access services.

379. Other recent developments also show that consumers' use of today's Internet to access content and applications is not inextricably intertwined with the underlying transmission component. For instance, consumers are increasingly accessing content and applications on the Internet using Wi-Fi-only devices that take advantage of Wi-Fi hotspots not provided by the consumer's underlying broadband service provider. Similarly, consumers can sometimes use Wi-Fi-enabled smartphones not only to access the Internet via their service provider's mobile broadband network or Wi-Fi hotspots, but also using Wi-Fi hotspots offered by premises operators. Further, many consumers purchase content that can be accessed over any of a number of different transmission paths and devices over the Internet—for example, video over a fixed broadband connection to a flat-screen television, or over a Wi-Fi router connected to a fixed broadband connection to a tablet, or over a mobile broadband network to a smartphone.

380. In addition, countless third parties are now embedding electronics, software, sensors, and other forms of connectivity into a wide variety of everyday devices, such as wearables, appliances, thermostats, and parking meters that rely on Internet connectivity to provide value to the American consumer, including through mHealth, Smart Grid, connected education, and other initiatives. The growth of the Internet of Things is yet another clear indication that devices and services that consumers use with today's Internet are not inextricably intertwined with the underlying transmission component.

381. Finally, we observe that the Commission itself recognized in 2005 that the ''link'' between the transmission element of broadband Internet access service and the information service was not inextricable. Specifically, the 2005 *Wireline Broadband Classification Order* granted wireline broadband providers the option of offering the transmission component of broadband Internet access as a distinct common carrier service under Title II on a permissive basis, and a large number of rural carriers have exercised this option for nearly a decade. As NTCA explains, ''[t]he fact that the Commission recognized as far back as 2005 that the transmission component *could* be separated out, and *the fact that it has been separated out* and offered separately on a tariffed basis by a large number of carriers undercuts any argument'' that the transmission service and the services that ride atop that service are inextricably intertwined. Further, the 2007 *Wireless Broadband Classification Order* permitted providers of mobile broadband Internet access

service to offer the ''transmission component [of wireless broadband Internet access service] as a telecommunications service.

d. Opponents' Remaining Challenges Are Insubstantial

382. Some commenters contend that our ruling is contrary to a Congressional intent for keeping the Internet unregulated. We are not, however, regulating the Internet, *per se,* or any Internet applications or content. Rather, our reclassification of broadband Internet access service involves only the transmission component of Internet access service. As the D.C. Circuit has explained, ''Congress did not choose between'' competing ''market-based'' and ''common-carrier, equal access'' philosophies for broadband regulation; rather, ''the FCC possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband—a statutory reality that assumes great importance when parties implore courts to overrule FCC decisions on this topic.'' We recognize that the Commission's previous classification decisions concluded that classifying broadband Internet access service as an information service would ''establish a minimal regulatory environment'' that would promote the Commission's goal of ''ubiquitous availability of broadband to all Americans.'' We do not today abandon that goal but instead seek to promote it through a ''light-touch'' regulatory framework for broadband Internet access services under Title II. As noted earlier, there will be no rate regulation, no unbundling of last-mile facilities, no tariffing, and a carefully tailored application of only those Title II provisions found to directly further the public interest in an open Internet.

383. Several commenters argue that we should rely exclusively on industry self-regulation to promote the policies discussed above. While we applaud voluntary industry initiatives, we find the self-regulation option to be lacking in a number of respects. First, for the reasons discussed in our forbearance analysis in section IV, we find that applying the few provisions in Title II necessary to implement the policy objectives identified above is in the public interest. We conclude that in the absence of credible Commission authority to step in when necessary in the public interest, voluntary measures will prove inadequate. Second, even the best-intentioned voluntary regulation initiatives are more likely to protect consumers when there is an expert agency that can provide a backstop to inadequate industry action that may result from collective action or coordination problems beyond any single firm's control.

384. Other commenters argue that classifying broadband Internet access service as a telecommunications service would impermissibly compel providers of broadband Internet access service to operate as common carriers. This argument misconstrues the nature of our ruling. Our decision to classify broadband Internet access service as a telecommunications service subject to the requirements of Title II derives from the characteristics of this service as it exists and is offered today. We do not ''require'' that any service ''be offered on a common carriage basis,'' but rather identify an existing service that is appropriately offered on a common carriage basis ''by virtue of its functions,'' as explained in detail above. Our classification decision is easily distinguished from the rules struck down in *Midwest Video II,* as those rules impermissibly attached common carrier obligations to services the Commission plainly lacked statutory authority to regulate in this manner. Congress has not spoken directly to the regulatory treatment of broadband Internet access services. Our classification of these services as telecommunications services is a permissible exercise of our delegated authority, one which we have adequately justified and defended based on the record before us. Because we have appropriately classified these services as telecommunications services, we do not run afoul of the Act's provision that a ''telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.'' We thus reject the argument that our ruling impermissibly compels common carriage.

385. Commenters also argue that the classification of broadband Internet access service as a telecommunications service results in this service being classified as both a telecommunications service and an information service, in violation of Congressional intent. We agree with commenters that these are best construed as mutually exclusive categories, and our classification ruling appropriately keeps them distinct. In classifying broadband Internet access service as a telecommunications service, we conclude that this service is not a functionally integrated information service consisting of a telecommunications component ''inextricably intertwined'' with information service components. Rather, we conclude, for the reasons explained above, that broadband Internet access service as it is offered and provided today is a distinct offering of telecommunications and that it is not an information service. As further explained above, any functional integration of DNS or caching with broadband Internet access service does not disrupt this classification, as both of those functions fall within the ''telecommunications systems management exception'' to the definition of an information service. Nor does the mere ''packaging'' of information services such as email with broadband Internet access service convert the latter into an information service. Our classification of broadband Internet access service therefore does not create any definitional inconsistency.

386. We also reject the argument that the classification of broadband Internet access service as an information service is implicit in the definition of ''interactive computer service'' set forth in section 230 of the Communications Act, a provision focused on the blocking and screening of offensive material. We find it unlikely that Congress would attempt to settle the regulatory status of broadband Internet access services in such an oblique and indirect manner, especially given the opportunity to do so when it adopted the Telecommunications Act of 1996. At any rate, the definition does not expressly classify broadband Internet access service, as we define that term herein, as an information service. (For one thing, the phrase ''any information service, system or access software provider'', *see* 47 U.S.C. 230 (f), may be broader in scope than the term ''information service'' as defined in section 3 of Act. To read the text otherwise would suggest that Congress intended the liability protections of section 230 to apply narrowly, excluding, for example, local exchange carriers that offered DSL, which as noted above was classified as a telecommunications service until 2005.) We therefore find no basis in section 230 for reconsidering our judgment that this service is properly understood to be a telecommunications service, for the reasons explained above.

387. Finally, we disagree with the suggestion that our decision to ''reclassify, to forbear, and to adopt rules grounded in Title II'' is not a ''logical outgrowth'' of the *2014 Open Internet NPRM.* The approach we adopt today is *more* than a logical outgrowth of the NPRM; it is one that the NPRM *expressly identified* as an alternative course of action. It is one on which the Commission sought comment in almost

every section of the NPRM. (Thus, at the very outset, in addition to ''the [section 706] blueprint offered by the D.C. Circuit'' on which the dissent now seeks to focus, Pai Dissent at 16–19, the Commission made clear that in looking for the ''best approach to protecting and promoting Internet openness,'' it ''will seriously consider the use of Title II,'' ''seeks comment on the benefits of both . . ., including the benefits of one approach over the other,'' and ''emphasize[s] . . . that the Commission recognizes that both section 706 and Title II are viable solutions and seek[s] comment on their potential use.'' The *NPRM* in this proceeding is thus nothing like the *NPRM* that was at issue in *Prometheus. Prometheus Radio Project v. FCC,* 652 F.3d 431 (3rd Cir. 2011). We also note that, under the APA, notice-and-comment rulemaking requirements apply only to the extent that we herein adopt legislative rules. 5 U.S.C. 553(b)(A), 553(d)(2).) It is one that several broadband Internet access service providers vigorously opposed in their comments in light of their own reading of the NPRM. (Dissents to the NPRM likewise reflect that this approach was on the table. *See 2014 Open Internet NPRM,* 29 FCC Rcd at 5653–55 (dissenting Statement of Commissioner Pai) (recognizing ''[i]t's not news that people of good faith disagree'' on the right approach, stating that ''[s]ome would like to regulate broadband providers as utilities under Title II,'' and discussing the scope of Title II's ''unjust or unreasonable discrimination'' requirement, the consequences of reclassification under Title II, and the alleged regulatory uncertainties posed under either section 706 ''or Title II''). Dissents to the NPRM likewise reflect that this approach was on the table. *See 2014 Open Internet NPRM,* 29 FCC Rcd at 5653 through 55 (dissenting Statement of Commissioner Pai) (recognizing ''[i]t's not news that people of good faith disagree'' on the right approach, stating that ''[s]ome would like to regulate broadband providers as utilities under Title II,'' and discussing the scope of Title II's ''unjust or unreasonable discrimination'' requirement, the consequences of reclassification under Title II, and the alleged regulatory uncertainties posed under either section 706 ''or Title II'').)

4. Mobile Broadband Internet Access Service Is Commercial Mobile Service

388. As outlined above, we conclude that broadband Internet access service, whether provided by fixed or mobile providers, is a telecommunications service. We also find that mobile broadband Internet access service is a commercial mobile service. In any event, however, even if that service falls outside the definition of ''commercial mobile service,'' we find that it is the functional equivalent of a commercial mobile service and, thus, not a private mobile service.

389. Congress adopted the commercial mobile service provisions in the Act with the goal of creating regulatory symmetry among similar mobile services. Section 332(d)(1) of the Communications Act defines ''commercial mobile service'' as ''any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.'' We find that mobile broadband Internet access service meets this definition. First, we find that mobile broadband Internet access service is a ''mobile service'' because subscribers access the service through their mobile devices. Next, we find that mobile broadband Internet access service is provided ''for profit'' because service providers offer it to subscribers with the intent of receiving compensation. We also conclude the mobile broadband Internet access services are widely available to the public, without restriction on who may receive them.

390. Finally, we conclude that mobile broadband Internet access service is an interconnected service. Section 332(d)(2) states that the term ''interconnected service'' means ''service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) . . . .'' The Commission has defined ''interconnected service'' as a service ''that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network.'' The Commission has defined the term ''public switched network'' to mean ''[a]ny common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use[s] the North American Numbering Plan in connection with the provision of switched services.''

391. While mobile broadband Internet access service does not use the North American Numbering Plan, we conclude for the reasons set out below that we should update our definition of public switched network pursuant to the authority granted to the Commission in section 332 so that our definition reflects the current network landscape rather than that existing more than 20 years ago. In its Order defining the terms ''interconnected'' and ''public switched network'' the Commission concluded that the term ''public switched network'' should not be defined in a static way, recognizing that the network is continuously growing and changing because of new technology and increasing demand. The purpose of the public switched network, the Commission noted, is ''to allow the public to send or receive messages to or from anywhere in the nation.'' This quality of ''ubiquitous access,'' for which the NANP was viewed as a proxy in 1994, was consistent with the key distinction underlying the formulation of the CMRS definition by Congress—differentiating the emerging cellular-based technology for ''commercial'' SMR service being deployed by Nextel's predecessor as a mass market service from the traditional ''private'' SMR dispatch services employed by taxi services and other private fleets. Today, consistent with our authority under the Act, and with the Commission's previous recognition that the ''public switched network'' will grow and change over time, we update the definition of public switched network to reflect current technology. Specifically, we revise the definition of ''public switched network'' to mean ''the network that includes any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use[s] the North American Numbering Plan, or public IP addresses, in connection with the provision of switched services.'' This definition reflects the emergence and growth of packet switched Internet Protocol-based networks. Revising the definition of public switched network to include networks that use standardized addressing identifiers other than NANP numbers for routing of packets recognizes that today's broadband Internet access networks use their own unique addressing identifier, IP addresses, to give users a universally recognized format for sending and receiving messages across the country and worldwide. (This definitional change to our regulations in no way asserts Commission jurisdiction over the assignment or management of IP addressing by the Internet Numbers Registry System.) We find that mobile broadband Internet access service is interconnected with the ''public switched network'' as we define it today and is therefore an interconnected service.

Some commenters contend that the Commission is barred from taking any actions that would change the definition of ''public switched network.'' CTIA, for example, argues that a revision to the definition of ''public switched network'' is ''beyond the scope of this rulemaking'' because the *2014 Open Internet NPRM* ''only asks whether mobile broadband falls within the definition of CMRS and does not propose any changes to the well-established definitions in section 20.3 of the FCC's rules.'' AT&T similarly argues that the Commission has not provided sufficient public notice. CTIA also argues that, even if there were notice, the Commission could not interpret the definition of ''public switched network'' to include the Internet, stating that ''[w]hile section 332 directs the Commission to define 'public switched network' by regulation, that definition must be consistent with the statutory text and congressional intent. Here, whatever limited discretion the Commission has as to that definition, it cannot be interpreted broadly enough to cover the broadband Internet.'' Verizon agrees that the *NPRM* did not provide notice that the Commission might change its regulations or their interpretation. In addition, Verizon argues that, although the Commission is statutorily authorized to define ''public switched network,'' the definition must still be consistent with the statutory text and congressional intent. Accordingly, Verizon contends, ''no matter how the Commission may redefine the 'public switched network' any new definition still would need to be anchored to the public switched telephone networks, which is what section 332 was designed to address.''

392. Contrary to these arguments, we find that revising the definition of ''public switched network'' and classifying mobile broadband Internet access service as a commercial mobile service is a logical outgrowth of the proposals in the *2014 Open Internet NPRM.* As discussed above, in the *NPRM,* the Commission proposed relying on section 706 of the Telecommunications Act of 1996 for legal authority to adopt rules to protect the open Internet but indicated that it would also seriously consider the use of Title II of the Communications Act as a basis for legal authority. The Commission sought comment on whether, in the event that it decided to reclassify broadband Internet access service under Title II, mobile broadband Internet access service would fit within the definition of ''commercial mobile service'' under section 332 of the Act and the Commission's rules implementing that section. In addition, the *NPRM* noted that the Commission's *Broadband Classification NOI* also asked whether the Commission should revisit its classification of wireless broadband Internet access services, noted that the NOI docket ''remains open,'' and directed that the record be refreshed in that proceeding ''including the inquiries contained herein.'' In the *Broadband Classification NOI,* the Commission sought comment on ''legal issues specific to . . . wireless services that bear on their appropriate classification.'' More specifically, it asked ''which of the three legal frameworks'' described therein (which included a Title II approach) ''would best support the Commission's policy goals for wireless broadband.'' In particular, it asked ''[t]o what extent should section 332 of the Act affect our classification of wireless broadband Internet services?'' In the *2014 Open Internet NPRM,* the Commission also noted that section 332 requires that wireless services that meet the definition of commercial mobile services be regulated as common carriers under Title II. The *NPRM* also asked about the extent to which forbearance should apply, if the Commission were to classify mobile broadband Internet access service as a CMRS service subject to Title II, and noted that the *Broadband Classification NOI* also asked whether the Commission could and should apply section 332(c)(1) as well as section 10 in its forbearance analysis for mobile services. The *2014 Open Internet NPRM* also sought comment on defining mobile broadband Internet access service and on application of Internet openness requirements to mobile broadband services.

393. We find that our decision today to classify mobile broadband Internet access service as both a telecommunications service under Title II and CMRS is a logical outgrowth of these discussions and requests for comments. The discussion and questions posed in the *2014 Open Internet NPRM* gave clear notice that the Commission was considering whether to reclassify mobile broadband Internet access under Title II as a telecommunications service and whether mobile broadband Internet access service would fit within the definition of ''commercial mobile service'' under the Act and the Commission's rules, including whether mobile broadband would meet the ''interconnected service'' component of the commercial mobile service definition. It was ''reasonably foreseeable'' that in answering that question the Commission would explore the scope of that component of the definition. Stated another way, ''interested parties should have anticipated that the change [in that definition] was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.'' While we think this proposition is clear from the questions posed by the *2014 Open Internet NPRM,* we further note that in this case mobile broadband providers ''themselves had no problem understanding the scope of the issues up for consideration; several . . . submitted comments'' on the issue. And, other parties commented that the Commission should update its definition of the term ''public switched network.'' Moreover, as referenced above, evidence in the record shows that a number of parties have directly addressed the application of section 332(d) and the Commission's implementing rules to mobile broadband Internet access and thus have been aware that the Commission was considering taking action to update the definition of ''public switched network'' and reclassify mobile broadband Internet access as commercial mobile service.

394. We also disagree with arguments that we are barred from updating the definition of public switched network to include networks that use addressing identifiers beyond NANP numbers associated with traditional telephone networks. CTIA, Verizon, and AT&T argue that the history of the legislation that defined ''commercial mobile service'' indicates that Congress intended the term ''public switched network'' to mean the ''public switched *telephone* network.'' CTIA, for example, argues that when Congress used the term ''public switched network'' in 1993, ''it did so knowing that the Commission and the courts routinely used that term interchangeably with 'public switched telephone network' '' and that ''[i]t is axiomatic that, when Congress 'borrows' a term of art that has been given meaning by the courts or the relevant agency, it 'intended [that term] to have its established meaning.' '' It argues also that ''the Conference Report accompanying the legislation confirms that, although Congress used the term 'public switched network,' it viewed that term as synonymous with 'the [p]ublic switched telephone network.' '' AT&T notes that Congress ''used the term 'the public switched network' '' and that ''Congress's use of the definite article 'the' and the singular 'network' makes clear that it was referring to a single 'public switched network' '' The parties also argue that the text of the FirstNet public safety legislation supports their argument because it distinguishes between the ''public switched network'' and the ''public Internet. AT&T contends also that the text of section 230 supports its views.

395. We agree with other commenters that these arguments do not give sufficient weight to Congressional intent as reflected in the text of the statute itself. As noted above, section 332(d)(2) of the Act uses the term ''public switched network'' rather than ''public switched telephone network.'' Moreover, as CTIA, Verizon, and AT&T acknowledge, the statute expressly delegates authority to the Commission to define the term ''public switched network.'' While we agree with CTIA that the delegation of authority does not provide boundless discretion, we find that what is clear from the statutory language is not what the definition of ''public switched network'' was intended to cover but rather that Congress expected the notion to evolve and therefore charged the Commission with the continuing obligation to define it. In short, by defining such terms by reference to the way they ''are defined by regulation by the Commission,'' Congress expressly delegated this policy judgment to the Commission. As noted above, in defining the terms ''interconnected service'' and ''public switched network,'' the Commission concluded that the term ''public switched network'' should not be defined in a static way and recognized that the network is continuously growing and changing because of new technology and increasing demand. The Commission expressly rejected calls in 1994 to define the public switched network as the ''public switched telephone network'' finding that a broader definition was consistent with Congress's decision to use the term ''public switched network,'' rather ''than the more technologically based term 'public switched telephone network.' '' (Contrary to one of the dissenting statements, (Pai Dissent at 46–47 & n.337), the Commission made clear it was not limiting the term ''public switched network'' to the traditional network. First, as noted above, it rejected that view in favor of the position of other commenters that ''the network should not be defined in a static way,'' an interpretation it found more consistent with the determination by Congress not to employ the term ''public switched telephone network.'' Second, it stated that any switched common carrier service that is interconnected with the traditional local or interexchange switched network would be defined ''as part of'' the public switched network ''for purposes of our definition,'' *Second CMRS Report and Order,* 9 FCC Rcd at 1436 through 1437, 59 FR 18493, Apr. 19, 1994. Even as early as 1994, the comments on which the Commission relied for its definition, *id.* at 1437, para. 60, made this very point. Comments of other wireless providers, with whom the Commission agreed about avoiding ''a static way'' of defining the network, *id.* at 1436, para. 59, made the same point.) Today, we build upon this analysis and update our definition of ''public switched network'' to reflect changes in technology. Reflecting the foregoing changes in technology and telecommunications infrastructure, our definition contemplates a single network comprised of all users of public IP addresses and NANP numbers, and not two separate networks as AT&T argues. We find that this action is consistent both with the text of the statute and Congressional intent. (We are not persuaded by AT&T's arguments that rely, not on the foregoing language or purpose of the 1993 statute at issue, but on subsequent statutes enacted for different purposes in 1996 and 2012. Quite apart from canons of statutory construction, this argument disregards the signal difference in section 332(d), which delegates the question of the scope of its terms to the Commission in light of its experience and market developments over time. We note, however, that AT&T's reliance on the ''policy'' of the 1996 Act reflected in section 230 is similar to one that Verizon made but that was not found by the *Verizon* court to be a bar to its conclusion that ''section 706 grants the Commission authority to promote broadband deployment by regulating how broadband providers treat edge providers.'')

396. We recognize that, in the 2007 *Wireless Broadband Classification Order,* the Commission previously concluded that section 332—''as implemented by the Commission's CMRS rules''—did not contemplate wireless broadband Internet access service ''as provided today,'' citing the *Second CMRS Report and Order's* finding that '' 'commercial mobile service' must still be interconnected with the local exchange or interexchange switched network as it evolves.'' The Commission also found that mobile broadband Internet access was not an ''interconnected service'' based on its reading of the Commission's existing rule, because the service did not provide its users with the capability to reach all other users of the public switched network. In addition, in 2011, in its order adopting data roaming requirements, the Commission defined services subject to the data roaming rule as services that are not interconnected with the public switched network. (The Commission defined ''commercial mobile data service'' which is subject to the data roaming rule as ''any mobile data service that is not interconnected with the public switched network.'' Opponents of reclassifying mobile broadband Internet access services have argued that the D.C. Circuit's decisions on data roaming and on the *2010 Open Internet Order* bar the Commission from reclassifying mobile broadband Internet access as commercial mobile service. First, we note that the issue of revising the Commission's definitions was neither raised nor discussed in the data roaming or open Internet decisions. Moreover, contrary to these arguments, we find that the Court's acceptance of the Commission's previous decisions based on its existing definitions does not preclude the Commission from revisiting and revising its definitions, as expressly permitted by the language of section 332. We note that if a mobile service is not interconnected to the public switched network (as updated herein) and otherwise meets the definition of ''commercial mobile data service'' in section 20.3 of the Commission's rules, it will continue to be subject to the data roaming rules.) However, the 2007 *Wireless Broadband Classification Order* (on which the 2011 *Data Roaming Order* also relied) was premised both on its view of the service ''as provided today'' and on ''an internal contradiction'' that a finding that wireless broadband Internet access was a commercial mobile would have caused with the finding that it was an ''information service.'' Moreover, in neither instance did the Commission consider whether it should revise the definition of ''public switched network,'' on which its conclusion in the 2007 *Wireless Broadband Classification Order* was premised.

397. Today, we update the definition of ''public switched network'' to reflect current technology and conclude that mobile broadband Internet access is an interconnected service. First, as outlined above, we find that mobile broadband is an ''interconnected service'' because it interconnects with ''public switched network'' as we define it today. We find also that mobile broadband is an interconnected service because it gives its users the capability to send and receive communications from all other users of the Internet. In defining the term ''interconnected service'' in the *Second CMRS Report and Order,* the Commission indicated its belief that, by using the term ''interconnected service,'' Congress intended to focus on whether mobile

services ''make interconnected service broadly available through their use of the public switched network.'' In addition, the Commission noted that Congress's purpose was to ''ensure that a mobile service that gives its customers the capability to communicate or to receive communications from other users of the public switched network should be treated as a common carriage offering.'' This was by contrast with the alternative ''private mobile service'' classification, which by statute includes services not ''effectively available to a substantial portion of the public.'' Mobile broadband Internet access service fits the former classification as millions of subscribers use it to send and receive communications on their mobile devices every day. In sharp contrast to 2007 when the Commission characterized mobile broadband Internet access services as being in a nascent stage, today the mobile broadband marketplace has evolved such that hundreds of millions of consumers now use mobile broadband to access the Internet. For example, as noted earlier, by November 2014, 73.6 percent of the entire U.S. age 13+ population was communicating with smart phones, a figure which has continued to rise rapidly over the past several years. In addition, the number of mobile connections already exceeds the U.S. population and Cisco forecasts that by 2019, North America will have nearly 90% of its installed based converted to smart devices and connections, and smart traffic will grow to 97% of the total global mobile traffic. Mobile broadband subscribers, who use the same devices to receive voice and data communications, can also send or receive communications to or from anywhere in the nation, whether connected with other mobile broadband subscribers, fixed broadband subscribers, or the hundreds of millions of Web sites available to them over the Internet. This evidence of the extensive changes that have occurred in the mobile marketplace demonstrates the ubiquity and wide scale use of mobile broadband Internet access service today.

398. Today we update the definition of ''public switched network'' to reflect current mass market communications network technologies and configurations, and the rapidly growing and virtually universal use of mobile broadband service. It also is more consistent with Congressional intent to recognize as an ''interconnected service'' today's broadly available mobile broadband Internet access service, which connects with the Internet and provides its users with the ability to send and receive communications from all other users connected to the Internet, (whether fixed or mobile). As CTIA recognizes, Congress's intent in enacting section 332 was to create a symmetrical regulatory framework among similar mobile services that were made available ''to the public or . . . to such classes of eligible users as to be effectively available to a substantial portion of the public.'' Given the universal access provided today and in the foreseeable future by and to mobile broadband and its present and anticipated future penetration rates in the United States, we find that our decision today classifying mobile broadband Internet access as a commercial mobile service is consistent with Congress's objective. As noted above, that is a policy judgment that section 332(d) expressly delegated to the Commission, consistent with its broad spectrum management authority under Title III.

399. Moreover, we agree with commenters who argue that mobile broadband Internet access service meets the definition of interconnected service for a wholly independent reason: Because—even under our existing definition of ''public switched network'' adopted in 1994—users have the ''capability,'' as provided in section 20.3 of our rules, to communicate with NANP numbers using their broadband connection through the use of VoIP applications. Other parties disagree, arguing that, regardless of the attributes of VoIP services that ride over broadband Internet access networks, broadband Internet access service itself does not offer the ability to reach all NANP endpoints. These parties note also that the Commission itself has previously concluded that mobile broadband Internet access, in and of itself, does not provide the ability to reach all other users of the public switched network.

400. We find that the Commission's previous determination about the relationship between mobile broadband Internet access and VoIP applications in the context of section 332 no longer accurately reflects the current technological landscape. Today, users on mobile networks can communicate with users on traditional copper based networks and IP based networks, making more and more networks using different technologies interconnected. In addition, mobile subscribers continue to increase their use of smartphones and tablets and the significant growth in the use of mobile broadband Internet access services has spawned a growing mobile application ecosystem. The changes in the marketplace have increasingly blurred the distinction between services using NANP numbers and services using public IP addresses and highlight the convergence between mobile voice and data networks that has occurred since the Commission first addressed the classification of mobile broadband Internet access in 2007. Today, mobile VoIP, as well as over-the-top mobile messaging, is among the increasing number of ways in which users communicate indiscriminately between NANP and IP endpoints on the public switched network. In view of these changes in the nature of mobile broadband service offerings, we find that mobile broadband Internet access service today, through the use of VoIP, messaging, and similar applications, effectively gives subscribers the capability to communicate with all NANP endpoints as well as with all users of the Internet. (In support of arguments regarding interconnection, one of the dissents (Pai Dissent at 51 n.362), cites the inapposite *Time Warner Cable Request for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection under section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers,* Memorandum Opinion and Order, 22 FCC Rcd 3513, 3520, paras. 15 through 16 (Wireline Comp. Bur. 2007). Our interpretation here of the Commission's own rule as to what constitutes the ''capability'' to communicate with NANP endpoints is a completely different question from whether wholesale carriers are entitled to interconnection rights under section 251 of the Act regardless of the regulatory status of VoIP services provided to end users, which was the issue addressed by the staff in the Time Warner Cable request for a Declaratory Ruling.)

401. We also note that, under the Commission's definition of ''interconnected service'' in section 20.3 of the rules, a service is interconnected even if ''. . . the service provides general access to points on the public switched network but also restricts access in certain limited ways.'' Thus, the Commission's definition, while requiring that the interconnected service provide the ''capability'' for access to all other users of the public switched network, also recognizes that services that restrict access to the public switched network, in certain limited ways, should also be viewed as interconnected. (In adopting the definition of interconnected service in

the *Second CMRS Report and Order,* the Commission recognized that interconnected services could be limited and noted that ''[i]n defining interconnected service in terms of transmissions to or from 'anywhere' on the PSN, we note that it is necessary to qualify the scope of the term 'anywhere'; if a service that provides general access to points on the PSN also restricts calling in certain limited ways (*e.g.*, calls attempted to be made by the subscriber to '900' telephone numbers are blocked), then it is our intention still to include such a service within the definition of 'interconnected service' for purposes of our part 20 rules.'') Accordingly, to the extent that there is an argument that, even with an updated definition of public switched network, mobile broadband Internet access still would not meet the definition of interconnected because it would only enable communications with *some* rather than *all* users of the public switched network, *i.e.*, users with NANP numbers, we disagree and find that the Commission's rules recognize that interconnected services may be limited in certain ways. Our interpretation of the Commission's rules is consistent with their purpose, which is to ascertain whether the interconnected service is ''broadly available.'' It is also most consistent with, and must be informed by, the key section 332(d) guidepost that Congress provided to the Commission in granting it authority to define these terms. This guidepost refers to a service available to ''the public'' or to such classes of eligible users as to be effectively available ''to a substantial portion of the public.'' This focus of the inquiry on availability to the public or a substantial portion of it is also consistent with the specific purpose of the statute, which was to create a symmetrical regulatory framework for similar commercial services then being offered to consumers by cellular licenses and by SMR licensees who were using licenses that traditionally had been used to provide wireless service only to limited groups of users (*e.g.*, taxi fleets). (To make this point clear, and in the exercise of our authority to ''specif[y] by regulation'' what services qualify as CMRS services that make interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, we have made a conforming change to the definition of Interconnected Service in section 20.3 of the Commission's rules.)

402. Lastly, because today we classify mobile broadband Internet access service as a telecommunications service, designating it also as commercial mobile service subject to Title II is most consistent with Congressional intent to apply common carrier treatment to telecommunications services. Specifically, as in 2007, but for different reasons in light of our reclassification of the service as a ''telecommunications service,'' we find that classifying mobile broadband Internet access service as a commercial mobile service is necessary to avoid a statutory contradiction that would result if the Commission were to conclude both that mobile broadband Internet access was a telecommunications service and also that it was not a commercial mobile service. A statutory contradiction would result from such a finding because, while the Act requires that providers of telecommunications services be treated as common carriers, it prohibits common carrier treatment of mobile services that do not meet the definition of commercial mobile service. Finding mobile broadband Internet access service to be commercial mobile service avoids this statutory contradiction and is most consistent with the Act's intent to apply common carrier treatment to providers of telecommunication services.

403. *Mobile Broadband Internet Access Service Is Not a Private Mobile Service.* Our conclusion that mobile broadband Internet access service is a commercial mobile service, through the application of our updated definition of ''public switched network,'' leads unavoidably to the conclusion that it is not a private mobile service. Indeed, we believe that today's mobile broadband Internet access service, with hundreds of millions of subscribers and the characteristics discussed above, is not akin to the private mobile service of 1994, such as a private taxi dispatch service, services that offered users access to a discrete and limited set of endpoints. Even, however, if that were not so, there is another reason that mobile broadband Internet access service is not a private mobile service: It is the functional equivalent of a commercial mobile service, even under the previous definition of ''public switched network.'' As with the policy judgments reflected in the other two definitional subsections of section 332(d) and described above, Congress expressly delegated authority to the Commission to determine whether a particular mobile service may be the functional equivalent of a commercial mobile service. Specifically, section 332 of the Act defines ''private mobile service'' as ''any mobile service . . . that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.'' We find that mobile broadband Internet access service is functionally equivalent to commercial mobile service because, like commercial mobile service, it is a widely available, for profit mobile service that offers mobile subscribers the capability to send and receive communications on their mobile device to and from the public. Although the services use different addressing identifiers, from an end user's perspective, both are commercial services that allow users to communicate with the vast majority of the public.

404. CTIA, Verizon, and AT&T argue that mobile broadband Internet access service cannot be considered the functional equivalent of commercial mobile service. First, they argue that the Commission failed to provide notice that it might deem mobile broadband the functional equivalent of CMRS. Next, CTIA argues that ''Congress intended the hallmark of CMRS to be the provision of interconnected service through use of the PSTN. No service lacking this essential attribute could amount to a functional equivalent of CMRS.'' Verizon argues that ''because mobile broadband Internet access service cannot, on its own, be used to place calls to telephone numbers, and CMRS cannot be used to connect with (for example) Google's search engine or Amazon.com or any of the millions of other sources of online content, these two services are not substitutes, and cannot be deemed functionally equivalent.'' AT&T and CTIA argue that mobile broadband Internet access is not a substitute for CMRS and therefore is not the functional equivalent of CMRS. Verizon, CTIA, and AT&T argue that the issue of whether or not mobile VoIP applications or services themselves may be interconnected with the public switched network should have no bearing on the determination of whether mobile broadband Internet access service itself may be viewed as the functional equivalent of commercial mobile service.

405. We disagree with these arguments. First, for the reasons discussed above, we disagree with the parties' arguments regarding notice. We find that our decision today that mobile broadband Internet access service may be viewed as the functional equivalent of commercial mobile service is a logical outgrowth of the discussions and questions presented in the *2014 Open Internet NPRM.* As noted above, our *2014 Open Internet NPRM* sought

comment on the option of revising the classification of mobile broadband Internet access service and on whether it would fit within the definition of commercial mobile service under section 332 of the Act and the Commission's rules implementing that section, including section 20.3. Section 20.3 of the Commission's rules defines commercial mobile radio service as a mobile service that is: ''Provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; an interconnected service; and available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public; or the functional equivalent of such a mobile service . . . .'' Interested parties should have reasonably foreseen and in fact were aware that the Commission would analyze the functional equivalence of mobile broadband Internet access service as part of its consideration of whether it should revise the classification of mobile broadband Internet access and whether mobile broadband Internet access would fit within the definition of commercial mobile service under section 332. Indeed, several parties have submitted comments on this question.

406. We also disagree with CTIA's contention that, if a mobile service is not an interconnected service through the use of the public switched telephone network, it may not be considered the functional equivalent of commercial mobile service. This argument would render the functional equivalence language in the statute superfluous by essentially requiring a functionally equivalent service to meet the literal definition of commercial mobile service. We find that Congress included the functional equivalence provision in the statute precisely to address such new developments for services that may not meet the literal definition of commercial mobile service. We also disagree with Verizon that, because mobile broadband subscribers may use their service to communicate with a different and broader range of entities, the two services cannot be functionally equivalent. As noted above, both mobile broadband Internet access service and commercial mobile service provide their users with a service that enables ubiquitous access to the vast majority of the public. The fact that the services may *also* enable communications in other ways or with different groups does not make them less useful as substitutes for commercial mobile service. Moreover, regardless of whether providers may offer voice and data services separately, as discussed above, from both a technical as well as a consumer perspective, there are increasingly fewer distinctions or interoperability issues between these types of services. The marketplace changes that have occurred since the Commission first addressed the classification of mobile broadband Internet access service in 2007 support our finding that mobile broadband Internet access service offered to the mass market must be viewed today as the functional equivalent of commercial mobile service.

407. We recognize that, in the *Second CMRS Report and Order,* the Commission created a petition-based process for parties interested in challenging the classification of a particular service as private mobile service, and indicated that it would consider a variety of factors to determine whether a particular service is the functional equivalent of a CMRS service. Specifically, as AT&T and CTIA point out, the Commission said it would consider consumer demand for the service in question to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review. Section 20.9 of the Commission's rules articulates the same standard for parties interested in challenging the classification of a service as a private mobile service. While we do not amend section 20.9's separate provision for a petition process in other contexts, for the reasons stated above related to today's widespread distribution and use of mobile broadband devices, we are amending section 20.3 to reflect our conclusion that mobile broadband Internet access service is the functional equivalent of CMRS.

5. The Reclassification of Broadband Internet Access Service Will Preserve Investment Incentives

408. In this section, we address potential effects of our classification decision on investment and innovation in the Internet ecosystem. Our classification of broadband Internet access service flows from the marketplace realities in how this service is offered. In reaching these conclusions, we also consider whether the resulting regulatory environment produces beneficial conditions for investment and innovation while also ensuring that we are able to protect consumers and foster competition. We find that classifying broadband Internet access service as a telecommunications service—but forbearing from applying all but a few core provisions of Title II—strikes an appropriate balance by combining minimal regulation with meaningful Commission oversight. This approach is based on the proven model Congress and the Commission have applied to CMRS, under which investment has flourished.

409. Based on our review of the record, the proven application of the CMRS model, and our predictive judgment about the future of the ecosystem under our new legal framework, we conclude that the new framework will not have a negative impact on investment and innovation in the Internet marketplace as a whole. As is often the case when we confront questions about the long-term effects of our regulatory choices, the record in this proceeding presents conflicting viewpoints regarding the likely impact of our decisions on investment. We cannot be certain which viewpoint will prove more accurate, and no party can quantify with any reasonable degree of accuracy how either a Title I or a Title II approach may affect future investment. Moreover, regulation is just one of many factors affecting investment decisions. Although we appreciate carriers' concerns that our reclassification decision could create investment-chilling regulatory burdens and uncertainty, we believe that any effects are likely to be short term and will dissipate over time as the marketplace internalizes our Title II approach, as the record reflects and we discuss further, below. More significantly, to the extent that our decision might in some cases reduce providers' investment incentives, we believe any such effects are far outweighed by positive effects on innovation and investment in other areas of the ecosystem that our core broadband policies will promote. Industry representatives support this judgment, stating that combined reclassification and forbearance decisions will provide the regulatory predictability needed to spur continued investment and innovation not only in infrastructure but also in content and applications.

410. *Investment Incentives.* The *2014 Open Internet NPRM* generated spirited debate about the consequences that classifying broadband Internet access service as a telecommunications service would have for investment incentives. Opponents of reclassification assert that Title II requirements will stifle innovation and investment. Other

commenters vigorously support the opposite position, asserting that reliance on section 706 authority to support open Internet rules is a course fraught with prolonged uncertainty that will stifle investment and that has already had detrimental economic effects. These and other commenters claim that a cautious regulatory approach based on Title II will provide much-needed predictability to investors and consumers alike, while ensuring that the Commission has the statutory authority necessary to protect the open Internet, promote competition, and protect consumers.

411. The key drivers of investment are demand and competition. Internet traffic is expected to grow substantially in the coming years, and the profits associated with satisfying that growth provide a strong incentive for broadband providers to continue to invest in their networks. In addition, continuing advances in technology are lowering the cost of providing Internet access service. The possibility of enhancing profit margins can be expected to induce broadband providers to make the appropriate network investments needed to capture a reduction in costs made possible only through technological advances.

412. Competition not only creates the correct incentives for investment and promotes innovation in the broadband infrastructure needed to support robust and ubiquitous Internet access service, but also spurs innovation and investment at the ''edge'' of the network, where content and applications are created and deployed. As one commenter explains, ''Title II promotes competitive entry in at least two ways.'' First, section 224 (from which we do not forbear in the context of broadband Internet access service, as discussed below) ''ensures that telecommunications carriers receive access to the poles of local exchange carriers and other utilities at just, reasonable, and nondiscriminatory rates,'' an ''important investment benefit that will enable those deploying fiber-to-the-home or other competitive networks to deploy more expeditiously and efficiently.'' (Conversely, ACA asserts that reclassification would result in increased pole attachment rates for many of its members, which would have the effect of lowering investment incentives both for continued investment in existing facilities and for new deployments. We do not agree with ACA's prediction concerning investment incentives. As we explain further below, we are committed to avoiding an outcome in which entities misinterpret today's decision as an excuse to increase pole attachment rates of cable operators providing broadband Internet access service. It is not the Commission's intent to see any increase in the rates for pole attachments paid by cable operators that also provide broadband Internet access service, and we caution utilities against relying on this decision to that end. This Order does not itself require any party to increase the pole attachment rates it charges attachers providing broadband Internet access service, and we would consider such outcomes unacceptable as a policy matter. We will be monitoring marketplace developments following this Order and will promptly take further action in that regard if warranted. In any case, such arguments do not persuade us not to reclassify broadband Internet access service, since in reclassifying that service we simply acknowledge the reality of how it is being offered today.) Title II also ''offers other benefits at the state level, including access to public rights of way,'' which some broadband providers reportedly utilize to deploy networks.

413. Further, contrary to the assertions of opponents of reclassification, sensible regulation and robust investment are not mutually exclusive. The investment record of incumbent LECs since passage of the 1996 Act calls into question claims that regulation necessarily stifles investment. Indeed, it appears that AT&T, Verizon, and Qwest (now CenturyLink) increased their capital investments as a percentage of revenues immediately after the Commission expanded Title II requirements pursuant to the Telecommunications Act of 1996, (The 1996 Telecom Act imposed a set of new obligations on incumbent local exchange carriers, including, most importantly, the duty to provide competing carriers access to unbundled network elements at cost-based rates. *See* 47 U.S.C. 251(c)(3), 252(d)(1). The Commission adopted rules implementing the unbundling requirements in 1996.) while investment levels decreased after 2001, during a period when the Commission relieved providers of many unbundling requirements and other regulatory obligations. And, of course, wireline DSL was regulated as a common-carrier service until 2005—a period in the late '90s and the first five years of this century, which saw the highest levels of wireline broadband infrastructure investment to date. At a minimum, this evidence demonstrates that robust investment can and does occur even when new regulations are adopted. Our conclusions are not premised on the assumption that regulation never harms investment, nor do we deny that deregulation often promotes investment; rather, we reject assertions that reclassification will substantially diminish overall broadband investment. This is further supported by examining broadband providers' investment histories since the announcement of the *Broadband Classification NOI* in 2010. While the Commission did not utilize reclassification to support its *2010 Open Internet Order,* it did not close the docket on the *Broadband Classification NOI,* indicating that reclassification remained an open question. The record demonstrates that broadband providers continued to invest, at ever increasing levels, in their networks post-2010, after which broadband providers were clearly on notice that the Commission was considering reclassifying broadband Internet access service as a telecommunications service and imposing certain Title II regulations upon them.

414. A number of market analysts concur that dire predictions of disastrous effects on investment are overblown. Although some commenters claim that then-Chairman Genachowski's May 6, 2010 announcement that the Commission would consider adopting a Title II approach prompted analysts to downgrade the ratings of Internet access service providers and sent stock prices downward, the effect of this announcement on stock prices, if any, is by no means clear. (Free Press explains that following the announcement of the 2010 *Broadband Classification NOI,* ''[m]ost of the ISP stocks barely moved from this announcement. Verizon and AT&T each fell 2 percent. Cable stocks did drop more (on substantially higher volume), but this was primarily due to . . . over-valuation of these stocks following better-than-expected Q1 earnings reports. This was compounded by the broader market concerns stemming from the EU debt crisis.'' Free Press Comments at 114. In the months following the announcement the ''ILECs, Cable and Wireless companies were outperforming the broader market, and vastly outperforming the edge companies' stocks. Comcast was the only ISP in negative territory, yet still outperformed the broader market. And its issues were more related to the merger than the [NOI].'') Further, there was no appreciable movement in capital markets following substantial public discussion of the potential use of Title II in November. What is clear from this debate is that stock price fluctuations can be caused by many different factors

and are susceptible to various interpretations. (At any moment in time, the price of a stock reflects the market's valuation of the cash-flow-generating capability of the firm. Because a firm's cash flow is based on a multitude of factors, it is improper to infer that observed stock price changes reflect the market's belief that infrastructure investment will decline.) Accordingly, we find unpersuasive the arguments that Title II classification would have a negative impact on stock value.

415. Tellingly, major infrastructure providers have indicated that they will in fact continue to invest under the framework we adopt, despite suggesting otherwise in their filed comments in this proceeding. For example, Sprint asserts in a letter in this proceeding that ''[s]o long as the FCC continues to allow wireless carriers to manage our networks and differentiate our products, Sprint will continue to invest in data networks regardless of whether they are regulated by Title II, section 706, or some other light touch regulatory regime.'' It adds that ''Sprint does not believe that a light touch application of Title II, including appropriate forbearance, would harm the continued investment in, and deployment of, mobile broadband services.'' Verizon's chief financial officer, Francis Shammo, told investors in a conference call in response to a question about the effect of ''this move to Title II,'' that ''I mean to be real clear, I mean this does not influence the way we invest. I mean we're going to continue to invest in our networks and our platforms, both in Wireless and Wireline FiOS and where we need to. So nothing will influence that. I mean if you think about it, look, I mean we were born out of a highly regulated company, so we know how this operates.''

416. Today's Order addressing forbearance from Title II and accompanying rules for BIAS will resolve concerns about uncertainty regarding the application of Title II to these services, which some argue could chill investment. By grounding our regulatory authority on firm statutory footing and defining the scope of our intended regulation, our decision establishes the regulatory predictability needed by all sectors of the Internet industry to facilitate prudent business planning, without imposing undue burdens that might interfere with entrepreneurial opportunities. Moreover, the forbearance we grant we today is broad in scope and extends to obligations that might be viewed as characteristic of ''utility-style'' regulation. In particular, we forbear from imposing last-mile unbundling requirements, a regulatory obligation that several commenters argue has led to depressed investment in the European broadband marketplace. As such, we disagree with commenters who assert that classification of BIAS as a telecommunications service would chill investment due to fears that future Commissions will reverse our forbearance decision, and that forbearance will engender protracted litigation. (Other commenters also wrongly suggest that we plan to apply ''old world'' common carrier rules to Internet access service, conjuring the specter of pervasive and intrusive cost-of-service rate regulation.)

417. Some opponents argue that classifying broadband Internet access services as telecommunications services will necessarily lead to regulation of Internet backbone services, CDNs, and edge services, compounding the suppressive effects on investment and innovation throughout the ecosystem. Our findings today regarding the changed broadband market and services offered are specific to the manner in which *these particular* broadband Internet access services are offered, marketed, and function. We do not make findings with regard to the other services, offerings, and entities over which commenters raise concern, and in fact explicitly exclude such services from our definition of broadband Internet access services.

418. CALinnovates submitted a commissioned White Paper by NERA Economic Consulting, asserting that reclassification will have a strong negative effect on innovation (with associated harms to investment and employment). The White Paper asserts that small edge providers will be harmed by reclassification, as Title II provisions ''will serve to increase the capital costs for innovators both directly and indirectly as well as to foster the sort of regulatory uncertainty that deters investors from ever investing.'' We disagree. The White Paper assumes that broadband Internet access services will be subject to the full scope of Title II provisions, and ascribes increased costs to regulatory uncertainty. As discussed below, we forbear from application of many of Title II's provisions to broadband Internet access services, and in doing so, provide the regulatory certainty necessary to continued investment and innovation. We also reject the argument, set forth by the Phoenix Center, that reclassification would require broadband providers ''to create, and then tariff, a termination service for Internet content under section 203 of the Communications Act.''

419. US Telecom submitted a study finding that under Title II regulation, wireline broadband providers are likely to invest significantly less than they would absent Title II regulation over the next five years, putting at risk much of the large capital investments that will be needed to meet the expected increases in demand for data service. The study contains several substantial analytical flaws which call its conclusions into question. First, the study inaccurately assumes that no wireless services are Title II services. In fact, wireless voice service is subject to Title II with forbearance, similar to the approach that we adopt here for BIAS. Second, the empirical models in the study incorrectly leave out factors that are important determinants of the dependent variables. For example, the level of the firm's demand for wireline services and its predicted rate of growth are left out as factors that clearly should be considered as determinants of wireline capital expenditures in Table 1. The statistical models in the paper are thus forced to either over- or under-estimate the role of the variables that are considered in the study, and as a result the predicted level of wireline investment subject to Title II regulation and its predicted rate of growth are not correct. We also agree with Free Press' argument that the study ignores the reality that once last-mile networks are built, the substantial initial investment has already been outlayed. For example, for the authors to observe that there was less investment in wireline networks than in wireless networks following the 2009 recession merely observes that wireline networks were largely constructed prior to 2009, while mobile wireless data networks were not. Further, as Free Press asserts, the study ignores evidence of massive network investments by incumbent LECs in the Ethernet market, which is regulated under Title II. The US Telecom study also did not factor in the potential effect of forbearance on investment decisions. We are thus unpersuaded that this study is determinative regarding the effect that reclassification will have on investment.

420. *CMRS, Enterprise Broadband, and Voluntary Title II.* Our conclusions are further borne out in examining the market for those services that are already subject to Title II. The Commission's experience with CMRS, to which Title II explicitly applies, demonstrates that application of Title II is not inconsistent with robust investment in a service. The sizable investments made by CMRS providers, who operate under a market-based Title II regulatory regime, allow us to predict

with ample confidence that our narrowly circumscribed application of Title II to broadband Internet access service will not cripple the regulated industries or deprive consumers of the benefits of continued investment and innovation in network infrastructure and Internet applications.

421. In 1993, Congress established a new regulatory framework for CMRS by giving the Commission the authority to forbear from applying any provision of Title II to CMRS except sections 201, 202, or 208. (This statutory framework, set forth in section 332 of the Communications Act, also preempts State or local government regulation of CMRS rates and entry, but permits State or local regulation of other CMRS terms and conditions.) Congress prescribed the standard for forbearance in terms nearly identical to the standard it later adopted for common carriage services in the Telecommunications Act of 1996. In 1994, the Commission implemented its new authority by forbearing from applying sections 203, 204, 205, 211, 212, and portions of 214, thereby relieving providers of the burdens associated with the filing of tariffs, Commission investigation of new and existing rates, rate prescription and refund orders, regulations governing interlocking directorates, and regulatory control of market entry and exit. CMRS providers remain subject to the remaining provisions in parts I and II of Title II. Recognizing that the ''continued success of the mobile telecommunications industry is significantly linked to the ongoing flow of investment capital into the industry,'' the Commission sought to ensure that its policies fostered robust investment, and it chose a regulatory path intended to establish ''a stable, predictable regulatory environment that facilitates prudent business planning.''

422. Mobile providers have thrived under a market-based Title II regime. During the period between 1993 and the end of 2009, while mobile voice was the primary driver of mobile revenues, wireless subscribership grew over 1600 percent, with more than 285 million subscribers at the end of 2009. Industry revenues increased from $10.9 billion in 1993 to over $152 billion—a 1300 percent increase. Further, between 1993 and 2009, the industry invested more than $271 billion in building out their wireless networks, which was in addition to monies spent acquiring spectrum. (We note that Verizon argues that wireless investment began increasing around 2003 due to growth in mobile broadband, and disputes the idea that this investment was driven by CMRS voice services. However, given that mobile broadband was not classified as a Title I information service until 2007, it is not clear the extent to which increases in investment before then can be attributed to a non-CMRS regulatory environment. Furthermore, voice service has continued to account for a significant portion of revenues. Free Press cites data showing substantial investment growth in the late 1990s (a time of increased demand for voice services) and the late 2000s to present (a period of increased smartphone use). During the latter years, as discussed above, Verizon's LTE network was subject to openness rules imposed by spectrum licensing conditions. Regardless of which assumptions are made, it is clear that there has been substantial network investment by mobile wireless providers during a significant period of time in which these providers' services have been subject to Title II regulation or openness requirements. Indeed, the data suggest that network investments have been driven more by overall market conditions, including consumer demand, than by the particular regulatory framework in place.) Verizon Wireless, in particular, has invested tens of billions of dollars in deploying mobile wireless services since being subject to the 700 MHz C Block open access rules, which overlap in significant parts with the open Internet rules we adopt today. Similarly, during this period, the wireless industry built nearly 235,000 cell sites across the country—more than an 1800 percent increase over the approximately 13,000 sites at the end of 1993. Wireless voice service is now available to over 99.9 percent of the U.S. population. More than 99.4 percent of subscribers are served by at least two providers, and more than 96 percent are served by at least three providers. Finally, the recent AWS auction, conducted under the specter of Title II regulation, generated bids (net of bidding credits) of more than $41 billion—demonstrating that robust investment is not inconsistent with a light-touch Title II regime. Fears that our classification decision will lead to excessive regulation of Internet access service should be dispelled by our record of regulating the wireless voice industry for nearly twenty years under Title II.

423. In addition, the key provisions of Title II apply to certain enterprise broadband services. In a series of forbearance orders in 2007 and 2008, the Commission forbore from application of a number of Title II's provisions to AT&T, Qwest, Embarq, and Frontier. Since that time, those services have been subject to sections 201, 202, and 208, as well as certain other provisions that the Commission determined were in the public interest. AT&T has recently called this framework an ''unqualified regulatory success story,'' and claimed that these services ''represent the epicenter of broadband investment that the Commission's national broadband policies seek to promote.'' The record does not evince any evidence that continued ''light touch'' Title II regulation has hindered investment in these services.

424. We observe that Title II currently applies not just to interconnected mobile voice and data services and to enterprise broadband services, but also the wired broadband offerings of more than 1000 rural local exchange carriers (LECs) that voluntarily offer their DSL and fiber broadband services as common carrier offerings ''in order to participate in National Exchange Carrier Association (NECA) tariff pools, which allow small carriers to spread costs and risks amongst themselves,'' without harmful effects on investment. (As discussed above, see section IV.C.1., the broadband Internet access service we define today is itself a transmission service. We disagree with the argument that in classifying BIAS, rather than a transmission ''component'' of BIAS, we are diverging from prior precedent regarding these DSL services and what the Justices were debating in *Brand X. See* Pai Dissent at 40 through 42. Whether we refer to that function as ''access,'' ''connectivity,'' or ''transmission,'' we have defined BIAS today such that it is the capability to send and receive packets to all or substantially all Internet endpoints. Thus, the service we define and classify today *is* the same transmission service as that discussed in prior Commission orders.) As NTCA, which represents many of these entities, explained, ''[c]ontrary to the dire, and somewhat hyperbolic, predictions of a few, the application of Title II *only and strictly* to the transport and transmission component underpinning retail broadband service will not cause investment in broadband networks and the services that ride atop them to grind to a halt. To the contrary, a continued lack of clear 'rules of the road' is far more likely to have a deleterious effect on investment nationwide by providers large and small.'' Thus, we disagree with assertions by the American Cable Association that ''Title II 'reclassification' or partial 'classification' of broadband Internet access service would have immediate

and disastrous economic consequences for small and medium-sized ISPs.''

*D. Judicial Estoppel Does Not Apply Here*

425. Finally, we reject the argument that we are judicially estopped from finding that broadband Internet access service is a telecommunications service. Judicial estoppel is an equitable doctrine that courts may invoke at their discretion to prevent a party that prevailed on an issue in one case from taking a contrary position in another case. Several commenters contend that because the Commission successfully argued before the Supreme Court in *Brand X* that cable modem service is an information service, the Commission is judicially estopped from finding that broadband Internet access service is a telecommunications service.

426. We disagree. Although the Supreme Court has not adopted a blanket rule barring estoppel against the government, if it exists at all it is ''hen's teeth rare.'' Judicial estoppel may be invoked against the government only when ''it conducts what 'appears to be a knowing assault upon the integrity of the judicial system,'' such as when the inconsistent positions are tantamount to a knowing misrepresentation or even fraud upon the court. Judicial estoppel will not be applied when the shift in position ''is the result of a change in public policy.''

427. In *Brand X,* the Supreme Court confirmed not only that an administrative agency *can* change its interpretation of an ambiguous statute, but that it '''*must* consider varying interpretations and the wisdom of its policy on a continuing basis.''' Following that directive, we have reexamined the Commission's prior classification decisions and now conclude that broadband Internet access service is a telecommunications service. This Declaratory Ruling is the result of what we believe to be the better reading of the Communications Act under current factual and legal circumstances; it manifestly is not the product of fraud or other egregious misconduct.

428. Moreover, judicial estoppel does not apply unless a party's current position is ''clearly inconsistent'' with its position in an earlier legal proceeding. In the *Brand X* litigation and now, the Commission has consistently maintained the position that the relevant statutory provisions are susceptible to more than one reasonable interpretation. Counsel for the Commission argued in *Brand X* that the Commission reasonably construed ambiguous statutory language in finding that cable modem service is an information service. The Supreme Court agreed and deferred to the Commission's judgment, but recognized that a contrary interpretation also would be permissible: ''[O]ur conclusion that it is *reasonable* to read the Communications Act to classify cable modem service solely as an 'information service' leaves untouched *Portland's* holding that the Commission's interpretation is not the *best* reading of the statute.'' Although we respect the Commission's prior classification decisions and the policy considerations underlying them, we believe the better view at this time is that broadband Internet access is a telecommunications service as defined in the Act. Because our decision does not result in '''the perversion of the judicial process,''' judicial estoppel should not be applied here.

*E. State and Local Regulation of Broadband Services*

429. We reject the argument that ''potential state tax implications'' counsel against the classification of broadband Internet access service as a telecommunications service. Our classification of broadband Internet access service as a telecommunications service appropriately derives from the factual characteristics of these services as they exist and are offered today. At any rate, we observe that the recently reauthorized Internet Tax Freedom Act (ITFA) prohibits states and localities from imposing ''[t]axes on Internet access.'' This prohibition applies notwithstanding our regulatory classification of broadband Internet access service. Indeed, the legislative history of ITFA emphasizes that Congress drafted its definition of ''Internet access'' to be independent of the regulatory classification determination in order to ''clarify that all transmission components of Internet access, regardless of the regulatory treatment of the underlying platform, are covered under the ITFA's Internet tax moratorium.'' (Moreover, today's decision would not bring broadband providers within the ambit of any state or local laws that impose property taxes on ''telephone companies'' or ''utilities,'' as those terms are commonly understood. As noted herein, we are not regulating broadband Internet access service as a utility or telephone company.)

430. Today, we reaffirm the Commission's longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes. (The record generally supports the continued application of this conclusion to broadband Internet access service.) As a general matter, mixed-jurisdiction services are typically subject to dual federal/state jurisdiction, except where it is impossible or impractical to separate the service's intrastate from interstate components and the state regulation of the intrastate component interferes with valid federal rules or policies. (Notwithstanding the interstate nature of BIAS, states of course have a role with respect to broadband. As the Commission has stated ''finding that this service is jurisdictionally interstate [] does not by itself preclude'' all possible state requirements regarding that service.) With respect to broadband Internet access services, the Commission has previously found that, ''[a]lthough . . . broadband Internet access service traffic may include an intrastate component, . . . broadband Internet access service is properly considered jurisdictionally interstate for regulatory purposes.'' The Commission thus has evaluated possible state regulations of broadband Internet access service to guard against any conflict with federal law. Though we adopt some changes to the legal framework regulating broadband, the Commission has consistently applied this jurisdictional conclusion to broadband Internet access services, and we see no basis in the record to deviate from this established precedent. The ''Internet's inherently global and open architecture'' enables edge providers to serve content through a multitude of distributed origination points, making end-to-end jurisdictional analysis extremely difficult—if not impossible—when the services at issue involve the Internet.

431. We also make clear that the states are bound by our forbearance decisions today. Under section 10(e), ''[a] State commission may not continue to apply or enforce any provision'' from which the Commission has granted forbearance. With respect to universal service, we conclude that the imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with our decision at the present time to forbear from mandatory federal USF contributions, and therefore we preempt any state from imposing any new state USF contributions on broadband—at least until the Commission rules on whether to provide for such contributions. (Preemptive delay of state and local regulations is appropriate when the Commission determines that such action best serves federal communications policies. We note that we are not aware of any current state

assessment of broadband providers for state universal service funds, as we understand that those carriers that have chosen voluntarily to offer Internet transmission as a Title II service classify such revenues as 100 percent interstate.) We recognize that section 254 expressly contemplates that states will take action to preserve and advance universal service, but as discussed below, our actions in this regard will benefit from further deliberation.

432. Finally, we announce our firm intention to exercise our preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme we adopt in this Order. While we establish a comprehensive regulatory framework governing broadband Internet access services nationwide today, situations may nonetheless arise where federal and state actions regarding broadband conflict. (We note also that we do not believe that the classification decision made herein would serve as justification for a state or local franchising authority to require a party with a franchise to operate a ''cable system'' (as defined in section 602 of the Act) to obtain an additional or modified franchise in connection with the provision of broadband Internet access service, or to pay any new franchising fees in connection with the provision of such services.) The Commission has used preemption to protect federal interests when a state regulation conflicts with federal rules or policies, and we intend to exercise this authority to preempt any state regulations which conflict with this comprehensive regulatory scheme or other federal law. For example, should a state elect to restrict entry into the broadband market through certification requirements or regulate the rates of broadband Internet access service through tariffs or otherwise, we expect that we would preempt such state regulations as in conflict with our regulations. While we necessarily proceed on a case-by-case basis in light of the fact specific nature of particular preemption inquiries, we will act promptly, whenever necessary, to prevent state regulations that would conflict with the federal regulatory framework or otherwise frustrate federal broadband policies.

## V. Order: Forbearance for Broadband Internet Access Services

433. Having classified broadband Internet access service as a telecommunications service, we now consider whether the Commission should grant forbearance as to any of the resulting requirements of the Act or Commission rules. As proposed in the *2014 Open Internet NPRM,* we do not forbear from sections 201, 202, and 208, along with key enforcement authority under the Act, both as a basis of authority for adopting open Internet rules as well as for the additional protections those provisions directly provide. As discussed below, we also do not forbear from certain provisions in the context of broadband Internet access service to protect customer privacy, advance access for persons with disabilities, and foster network deployment. Because we believe that those protections and our open Internet rules collectively will strike the right balance at this time of minimizing the burdens on broadband providers while still adequately protecting the public, particularly given the objectives of section 706 of the 1996 Act, we otherwise grant substantial forbearance.

### *A. Forbearance Framework*

434. Section 10 provides that the Commission ''shall'' forbear from applying any regulation or provision of the Communications Act to telecommunications carriers or telecommunications services if the Commission determines that:

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest. (For the same reasons set forth herein with respect to the forbearance granted under our section 10(a) analysis, forbearance from those same provisions and regulations in the case of the mobile broadband Internet access services also is consistent with the virtually identical forbearance standards for CMRS set forth in section 332(c)(1)(A).)

435. The Commission previously has considered whether a current need exists for a rule in evaluating whether a rule is ''necessary'' under the first two prongs of the three-part section 10 forbearance test. In particular, the current need analysis assists in interpreting the word ''necessary'' in sections 10(a)(1) and 10(a)(2). For those portions of our forbearance analysis that do require us to assess whether a rule is necessary, the D.C. Circuit concluded that '''it is reasonable to construe 'necessary' as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation.''' In contrast, section 10(a)(3) requires the Commission to consider whether forbearance is consistent with the public interest, an inquiry that also may include other considerations.

436. Also central to our analysis, section 706 of the 1996 Act ''explicitly directs the FCC to 'utiliz[e]' forbearance to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.''' In its most recent *Broadband Progress Report,* the Commission found ''that broadband is not being deployed to all Americans in a reasonable and timely fashion.'' This, in turn, triggers a duty under section 706 for the Commission to ''take immediate action to accelerate deployment.'' Within the statutory framework that Congress established, the Commission ''possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband.''

437. This proceeding is unlike typical forbearance proceedings in that, often, a petitioner files a petition seeking relief pursuant to section 10(c). In such proceedings, ''the petitioner bears the burden of proof—that is, of providing convincing analysis and evidence to support its petition for forbearance.'' However, under section 10, the Commission also may forbear on its own motion. Because the Commission is forbearing on its own motion, it is not governed by its procedural rules insofar as they apply, by their terms, to section 10(c) petitions for forbearance. (We thus also reject criticisms of possible forbearance based on arguments that the *2014 Open Internet NPRM* would not satisfy those rules. Indeed, while the Commission modeled its forbearance procedural rules on procedures from the notice and comment rulemaking context in certain ways, in other, significant ways it drew upon procedures used outside that context. Thus, the Commission's adoption of these rules neither expressly bound the Commission nor reflected its view of the general standards relevant to a notice and comment rulemaking.) Further, the fact that the Commission may adopt a rule placing the burden on a party filing a section 10(c) petition for forbearance in implementing an ambiguous statutory provision in section 10 of the Act, does not require the Commission to assume that burden where it forbears on its own motion, and we reject suggestions to the contrary. Because the Commission is not responding to a petition under section 10(c), we conduct our forbearance

analysis under the general reasoned decision making requirements of the Administrative Procedure Act, without the burden of proof requirements that section 10(c) petitioners face. We conclude that the analysis below readily satisfies both the standards of section 10 (We conclude that the section 10 analytical framework described above comports with the statutory requirements, and is largely consistent with alternative formulations suggested by others. To the extent that such comments could be read to suggest different analyses in any respects, we reject them as not required by section 10, as we interpret it above.) and the reasoned decision making requirements of the APA and thus reject claims that broad forbearance accompanying classification decisions necessarily would be arbitrary and capricious.

438. We reject arguments suggesting that persuasive evidence of competition is a necessary prerequisite to granting forbearance under section 10 even if the section 10 criteria otherwise are met. For example, the Commission has in the past granted forbearance from particular provisions of the Act or regulations where it found the application of other requirements (rather than marketplace competition) adequate to satisfy the section 10(a) criteria, and nothing in the language of section 10 precludes the Commission from proceeding on that basis where warranted. (Section 10(b) does direct the Commission to consider whether forbearance will promote competitive market conditions as part of the public interest analysis under section 10(a)(3). However, while a finding that forbearance will promote competitive market conditions may provide sufficient grounds to find forbearance in the public interest under section 10(a)(3), *see id.,* nothing in the text of section 10 makes such a finding a necessary prerequisite for forbearance where the Commission can make the required findings under section 10(a) for other reasons. For similar reasons we reject the suggestion that more geographically granular data or information or an otherwise more nuanced analysis are needed with respect to some or all of the forbearance granted in this Order. The record and our analysis supports forbearance from applying the statutory provisions and Commission regulations to the extent described below based on considerations that we find to be common nationwide, and as discussed in our analysis of the record below, we do not find persuasive evidence or arguments to the contrary in the record as to any narrower geographic area(s) or as to particular provisions or regulations.) Thus, although, in appropriate circumstances, persuasive evidence of competition can be a sufficient basis to grant forbearance, it is not inherently necessary to a grant of forbearance under section 10. The *Qwest Phoenix Order,* cited by some commenters in this regard, is not to the contrary. Unlike here, the Commission in the *Qwest Phoenix Order* was addressing a petition where the rationale for forbearance was premised on the state of competition. (Insofar as the Commission likewise was responding to arguments that competition was sufficient to warrant forbearance when acting on other forbearance petitions, this distinguishes those decisions, as well. Likewise, to the extent that the Commission has found competition to be a sufficient basis to grant forbearance on its own motion in the past, that does not dictate that it only can grant forbearance under such circumstances. Rather, the Commission grants forbearance where it finds that the section 10(a) criteria are met.) This proceeding does not involve a similar request for relief, and, indeed, the *Qwest Phoenix Order* itself specifically observed that ''a different analysis may apply when the Commission addresses advanced services, like broadband services,'' where the Commission, among other things, ''must take into consideration the direction of section 706.'' For similar reasons we reject as inconsistent with the text of section 10 and our associated precedent the argument that forbearance only is appropriate when the grant of forbearance will itself spur conduct that mitigates the need for the forborne-from requirements.

*B. Maintaining the Customer Safeguards Critical to Protecting and Preserving the Open Internet*

439. As discussed below, we find sections 201 and 202 of the Act, along with section 208 and certain fundamental Title II enforcement authority, necessary to ensure just and reasonable conduct by broadband providers and necessary to protect consumers under sections 10(a)(1) and (a)(2). We also find that forbearance from these provisions would not be in the public interest under section 10(a)(3), and therefore do not grant forbearance from those provisions and associated enforcement procedural rules with respect to the broadband Internet access service at issue here.

1. Authority To Protect Consumers and Promote Competition: Sections 201 and 202

440. The Commission has found that sections 201 and 202 ''lie at the heart of consumer protection under the Act,'' and we find here that forbearance from those provisions would not be in the public interest under section 10(a)(3). The Commission has never previously forborne from applying these ''bedrock consumer protection obligations,'' and we generally do not find forbearance warranted here. This conclusion is consistent with the views of many commenters that any service classified as a telecommunications service should remain subject to those provisions. However, particularly in light of the protections the open Internet rules provide and the ability to employ sections 201 and 202 in case-by-case adjudications, we are otherwise persuaded to forbear from applying sections 201 and 202 of the Act in a manner that would enable the adoption of *ex ante* rate regulation of broadband Internet access service in the future, as discussed below. (To be clear, this *ex ante* rate regulation forbearance does not extend to inmate calling services and therefore has no effect on our ability to address rates for inmate calling services under section 276.)

441. For one, sections 201 and 202 help enable us to preserve and protect Internet openness broadly, and applying those provisions benefits the public broadly by helping foster innovation and competition at the edge, thereby promoting broadband infrastructure investment nationwide. As explained above, the open Internet rules adopted in this Order reflect more specific protections against unjust or unreasonable rates or practices for or in connection with broadband Internet access service. These benefits—which can extend beyond the specific dealings between a given broadband provider and a given customer—persuade us that forbearance from sections 201 and 202 here is not in the public interest.

442. Retaining these provisions, moreover, is in the public interest because it provides the Commission direct statutory authority to protect Internet openness and promote fair competition while allowing the Commission to adopt a tailored approach and forbear from most other requirements. As discussed below, this includes forbearance from the pre-existing *ex ante* rate regulations and other Commission rules implementing sections 201 and 202. (We thus reject the arguments of some commenters against the application of these

provisions insofar as they assume that such additional regulatory requirements also will apply in the first instance.) As another example, this authority supports our forbearance from other interconnection requirements in the Act. Such considerations provide additional grounds for our conclusion that section 10(a)(3) is not satisfied as to forbearance from sections 201 and 202 of the Act with respect to broadband Internet access service.

443. We also conclude that it would not be in the public interest to forbear from applying sections 201 and 202 given concerns that limited competition could, absent the backstop provided by that authority, result in harmful effects. Among other things, broadband providers are in a position to be gatekeepers to the end-user customers of their broadband Internet access service. In addition, although there is some amount of competition for broadband Internet access service, it is limited in key respects. While harmful practices by broadband providers—whether in general or as to particular customers—conceivably could motivate an end user to select a different provider of broadband Internet access service, the record does not provide convincing evidence of the nature or extent of such effects in particular. (Commenters citing generalized information about the extent of switching among broadband providers does not address the specific concerns that we identify here about consumers' likelihood and ability to switch broadband providers based on particular practices by those providers, nor on the likelihood that any such switching would deter the harmful conduct.) To the contrary, for example, data show that the majority of Americans face a choice of only two providers of fixed broadband for service at speeds of 3 Mbps/768 kbps to 10 Mbps/768 kbps, and no choice at all (zero or one service provider) for service at 25/3 Mbps. We also find significant costs associated with switching service that further limit the potential benefits of any competition that would otherwise exist. These collectively persuade us that we cannot simply conclude, as a general matter, that there is extensive competition sufficient to constrain providers' conduct here. Moreover, as the Commission found in the CMRS context, competition would ''not necessarily protect all consumers from all unfair practices. The market may fail to deter providers from unreasonably denying service to, or discriminating against, customers whom they may view as less desirable.'' In addition, and again similar to the Commission's conclusion in the CMRS context, even in a competitive market certain conditions could create incentives and opportunities for service providers to engage in discriminatory and unfair practices. (For the same reasons discussed above, we are not persuaded to reach a different forbearance decision based on asserted levels of competition faced by small- or mid-sized broadband providers.) Furthermore, no matter how many options end users have in selecting a provider of Internet access service, or how readily they could switch providers, an edge provider only can reach a particular end user through his or her broadband provider. We thus reject suggestions that market forces will be sufficient to ensure that providers of broadband Internet access service do not act in a manner contrary to the public interest.

444. Against this backdrop we are unpersuaded by arguments seeking forbearance from sections 201 and 202 based on generalized arguments about marketplace developments, such as network investment or changes in performance or price per megabit, in the recent past. However, counterarguments in the record, longer-term trends, and our experience in the CMRS context where sections 201 and 202 have applied, leave us unpersuaded that the inapplicability of sections 201 and 202 were a prerequisite for any such marketplace developments. We are similarly unpersuaded by arguments comparing the U.S. broadband marketplace with those in Europe, given, among other things, the differences between the regulatory approach there and the regulatory framework that results from this Order. We thus find those arguments for forbearance sufficiently speculative and subject to debate that they do not overcome our public interest analysis above.

445. For these same reasons, we are not persuaded that application of sections 201 and 202 is not necessary to ensure just, reasonable, and nondiscriminatory conduct by broadband providers and for the protection of consumers under sections 10(a)(1) and (a)(2). As discussed above, applying these provisions enables us to protect customers of broadband Internet access service from potentially harmful conduct by broadband providers both by providing a basis for our open Internet rules and for the important statutory backstop they provide regarding broadband provider practices more generally.

446. We also observe that our forbearance decision as to sections 201 and 202 for broadband Internet access service is informed by the CMRS experience, where Congress specifically recognized the importance of sections 201 and 202 (along with section 208) in excluding those provisions from possible forbearance under section 332(c)(1)(A). Application of sections 201 and 202 has not frustrated investment in the wireless marketplace, nor has it led to *ex ante* regulation of rates charged to consumers for wireless voice service. Indeed, we find that the successful application of this legal framework in the CMRS context responds to the concerns of some commenters about the potential burdens, or uncertainty, resulting from the application of sections 201 and 202, which they contend could create disincentives for investment even standing alone and apart from *ex ante* rules. (While Verizon attempts to distinguish the CMRS experience by claiming that, unlike voice service, ''broadband has *never* been subject to Title II,'' Verizon Jan. 26, 2015 *Ex Parte* Letter at 5, this is both factually incorrect for the reasons described above, nor does it meaningfully address the fact that the CMRS marketplace has seen substantial growth and investment under the regulatory framework that the Commission did apply.) Moreover, within their scope, our open Internet rules reflect our interpretation of how sections 201 and 202 apply, providing further guidance and addressing possible concerns about uncertainty regarding the application of sections 201 and 202. Beyond that, we are not persuaded that concerns about the burdens or uncertainty associated with sections 201 and 202 counsel in favor of a contrary public interest finding under section 10(a)(3), particularly given the very generalized concerns commenters raised.

447. Although some have argued that section 706 of the 1996 Act provides sufficient authority to adopt open Internet protections, and we do, in fact, conclude that section 706 provides additional support here, we nonetheless conclude that the application of sections 201 and 202 is appropriate to remove any ambiguity regarding our authority to enforce strong, clear open Internet rules. (For example, although we find that we have authority under section 706 of the 1996 Act to implement appropriate enforcement mechanisms, our reliance on sections 201 and 202 as additional sources of authority (coupled with the enforcement provisions from which we do not forbear, as discussed below), eliminates possible arguments to the contrary.) Further, comments focused

exclusively on section 706 authority neglect the direct role that sections 201 and 202 will play in the overall regulatory framework we adopt, with respect to practices for or in connection with broadband Internet access service that are not directly governed by our rules.

448. We are persuaded, in part, by arguments that we should forbear from sections 201 and/or 202 outside the open Internet context, although we reject calls to entirely forbear from applying sections 201 and 202 outside that context or that we otherwise adopt a more granular decision regarding forbearance from provisions in sections 201 and/or 202. While open Internet considerations have led the Commission to revisit its prior decisions, our ultimate classification decision here simply acknowledges the reality of how these services are being offered today. (We thus reject claims that we somehow are using forbearance to increase regulation. Rather, we are using it to tailor the regulatory regime otherwise applicable to these telecommunications services.) Having classified BIAS as a telecommunications service, we exercise our forbearance authority to establish a tailored Title II regulatory framework that adequately protects consumers, ensures just and reasonable broadband provider conduct, and furthers the public interest—consistent with our goals of more, better, and open broadband. In addition, insofar as commenters cite the same arguments about past network investment or changes in performance or price per megabit in the recent past that we discussed above, we again find them sufficiently speculative and subject to debate that they do not overcome our forbearance analysis for sections 201 and 202 above. Moreover, as we noted above, our decision not to forbear from applying sections 201 and 202 not only enables our open Internet regulatory framework but supports our grant of broad forbearance from other provisions and regulations, as discussed below. In particular, as discussed below, we find that our sections 201 and 202 authority provides a more flexible framework better suited to this marketplace than many of the alternative regulations that otherwise would apply.

449. Nor do commenters adequately explain how forbearance could be tailored in these ways, at least in the context of case-by-case adjudication. For broadband providers' interconnection practices, which are not covered by the open Internet rules we adopt today, we expressly rely on the backstop of sections 201 and 202 for case-by-case decision making. We also rely on both sections 201 and 202 for conduct that is covered by the open Internet rules adopted here. Those rules reflect the Commission's interpretation of how sections 201 and 202 apply in that context, and thus the requirements of section 201 and 202 are coextensive as to broadband Internet access service covered by those rules. Commenters do not indicate, nor does the record otherwise reveal, an administrable way for the Commission to grant the requested partial forbearance while still pursuing such case-by-case decisions in the future. Further, while section 706 of the 1996 Act would remain, as well, we find that sections 201 and 202 provide a more certain foundation for evaluating providers' conduct and pursuing enforcement if warranted in relevant circumstances arising in the future. We thus are not persuaded that even these more limited proposals for forbearance from provisions in sections 201 and/or 202 as applied on a case-by-case basis would be in the public interest under section 10(a)(3).

450. Although we conclude that the section 10 criteria are not met with respect to the full scope of forbearance that these commenters seek, because we do not and cannot envision adopting new *ex ante* rate regulation of broadband Internet access service in the future, we forbear from applying sections 201 and 202 to broadband services to that extent. As described above, our approach here is informed by the success of the CMRS framework, which has not, in practice, involved *ex ante* rate regulation. In addition, as courts have recognized, when exercising its section 10 forbearance authority ''[g]uided by section 706,'' the Commission permissibly may ''decide[ ] to balance the future benefits'' of encouraging broadband deployment ''against [the] short term impact'' from a grant of forbearance. Under the totality of the circumstances here, including the protections of our open Internet rules—which focus on what we identify and the most significant problems likely to arise regarding these broadband services—and our ability to address issues *ex post* under sections 201 and 202 we do not find *ex ante* rate regulations necessary for purposes of section 10(a)(1) and (a)(2). Further, guided by section 706, and reflecting the tailored regulatory approach we adopt in this item, we find it in the public interest to forbear from applying sections 201 and 202 insofar as they would support the adoption of *ex ante* rate regulations for broadband Internet access service in the future.

451. To the extent some commenters express concern about future rules that the Commission might adopt based on this section 201 and 202 authority, we cannot, and do not, envision going beyond our open Internet rules to adopt *ex ante* rate regulations based on that section 201 and 202 authority in this context. Consequently, we forbear from sections 201 and 202 in that respect, as discussed above. In this Order, we decide only that forbearance from sections 201 and 202 of the Act to broadband Internet access service is not warranted under section 10 to the extent described above. Indeed, we find here that the application of sections 201 and 202 of the Act enable us to forbear from other requirements, including pre-existing tariffing requirements and Commission rules governing rate regulation, which we find are not warranted here. Thus, any pre-existing rate regulations adopted by the Commission under its Title II authority—including any regulations adopted under sections 201 and 202—will not be imposed on broadband Internet access service as a result of this Order. Finally, while other types of rules also potentially could be adopted based on section 201 and 202 authority, any Commission rules adopted in the future would remain subject to judicial review under the APA. (In this regard, commenters advocating forbearance from sections 201 and 202 to guard against new rules that the Commission might adopt pursuant to that authority do not meaningfully explain what incremental benefit that would achieve given that any future Commission proceeding would be required to adopt such rules in any case.)

2. Enforcement

452. We also retain certain fundamental Title II enforcement provisions, as well as the Commission's rules governing section 208 complaint proceedings. In particular, we decline to forbear from applying section 208 of the Act and the associated procedural rules, which provide a complaint process for enforcement of applicable provisions of the Act or any Commission rules. Section 208 permits ''[a]ny person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter in contravention of the provisions thereof'' to file a complaint with the Commission and seek redress. We also retain additional statutory provisions that we find necessary to ensuring a meaningful enforcement process. In particular, we decline to forbear from sections 206, 207, and 209 as a necessary adjunct to the section 208 complaint process. As the Commission

has held previously, forbearing from sections 206, 207, and 209 ''would eviscerate the protections of section 208'' because ''[w]ithout the possibility of obtaining redress through collection of damages, the complaint remedy is virtually meaningless.'' We similarly do not forbear from sections 216 and 217, which ''merely extend the Title II obligations of [carriers] to their trustees, successors in interest, and agents. The sections were intended to ensure that a common carrier could not evade complying with the Act by acting through others over whom it has control or by selling its business.'' Thus, we decline to forbear from enforcing these key Title II enforcement provisions with respect to broadband Internet access service.

453. We find that forbearance from these key enforcement provisions and the associated procedural rules does not satisfy any of the section 10(a) criteria. As discussed above, we decline to forbear from enforcement of sections 201 and 202 as they apply to broadband Internet access service. To make application of these provisions meaningful, the possibility of enforcement needs to be available. Consequently, insofar as we find above that sections 201 and 202 are necessary to guard against unjust, unreasonable, or unjustly or unreasonably discriminatory conduct by broadband providers and to protect consumers, that presumes the viability of enforcement. For these same reasons, forbearance from these key Title II enforcement provisions would not be in the public interest. Thus, our conclusion that section 10(a) is not met as to these key Title II enforcement provisions builds on our prior conclusion to that effect as to sections 201 and 202. (Consistent with our analysis above, *see supra* para.447, although section 706 of the 1996 Act would remain, these Title II enforcement provisions provide a more certain foundation for pursuing enforcement if warranted in relevant circumstances arising in the future.)

454. In the event that a carrier violates its common carrier duties, the section 208 complaint process would permit challenges to a carrier's conduct, and many commenters advocate for section 208 to apply. The Commission's procedural rules establish mechanisms to carry out that enforcement function in a manner that is well-established and clear for all parties involved. The Commission has never previously forborne from section 208. Indeed, we find it instructive that in the CMRS context Congress specifically precluded the Commission from using section 332 to forbear from section 208. Commenters also observe the important interrelationship between section 208 and sections 206, 207, 209, 216, and 217, which the Commission itself has recognized in the past, as discussed above. In addition, to forbear from sections 216 and 217 would create a loophole in our ability to evenly enforce the Act, which would imperil our ability to protect consumers and to protect against unjust or unreasonable conduct, and would be contrary to the public interest. The prospect that carriers may be forced to defend their practices before the Commission supports the strong public interest in ensuring the reasonableness and non-discriminatory nature of those actions, protecting consumers, and advancing our overall public interest objectives. (For the reasons discussed above, we thus reject the assertions of some commenters that enforcement is unduly burdensome. In particular, we are not persuaded that such concerns outweigh the overarching interest advanced by the enforceability of sections 201 and 202. Nothing in the record demonstrates that our need for enforcement differs among broadband providers based on their size, and we thus are not persuaded that a different conclusion in our forbearance analysis should be reached in the case of small broadband providers, for example.) While some commenters express fears of ''threats of abusive litigation'' or other burdens arising from the application of these provision, other commenters correctly note the speculative nature of those arguments given the lack of evidence of such actions where those provisions historically have applied (including in the CMRS context). In hearing section 207 claims, courts have historically been careful to consider the Commission's views as a matter of primary jurisdiction on the reasonableness of a practice under section 201(b), both in general and before awarding damages under section 207. In a number of cases, courts have held that there is no entitlement to damages under section 207 for a claim under section 201(b) unless the Commission has already determined that a particular practice is ''unreasonable.'' We endorse that approach here. At a minimum, we believe that courts reviewing BIAS practices under section 207 in the first instance should recognize the Commission's primary jurisdiction in a context such as this. The doctrine of primary jurisdiction is particularly important here, because the broadband Internet ecosystem is highly dynamic and the Commission has carefully designed a regulatory framework for BIAS to protect Internet openness and other important communications network values without deterring broadband investment and innovation. As a result, for all of the forgoing reasons, we conclude that none of the section 10(a) criteria are met as to forbearance from these fundamental Title II enforcement provisions and the associated Commission procedural rules with respect to the broadband Internet access service.

*C. Forbearance Analysis Specific to Broadband Internet Access Service*

455. As discussed elsewhere, with respect to broadband Internet access service we find that the standard for forbearance is not met with respect to the following limited provisions:

(a) Sections 201, 202, and 208, along with the related enforcement provisions of sections 206, 207, 209, 216, and 217, and the associated complaint procedures; and the Commission's implementing regulations (but, to be clear, the Commission forbears from all ratemaking regulations adopted under sections 201 and 202);

(b) Section 222, which establishes core customer privacy protections;

(c) Section 224 and the Commission's implementing regulations, which grant certain benefits that will foster network deployment by providing telecommunications carriers with regulated access to poles, ducts, conduits, and rights-of-way;

(d) Sections 225, 255, and 251(a)(2), and the Commission's implementing regulations, which collectively advance access for persons with disabilities; except that the Commission forbears from the requirement that providers of broadband Internet access service contribute to the Telecommunications Relay Service (TRS) Fund at this time. These provisions and regulations support the provision of TRS and require providers of broadband Internet access service, as telecommunications carriers, to ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable; and

(e) Section 254, the interrelated requirements of section 214(e), and the Commission's implementing regulations to strengthen the Commission's ability to support broadband, supporting the Commission's ongoing efforts to support broadband deployment and adoption; the Commission forbears from immediate contributions requirements, however, in light of the ongoing Commission proceeding.

456. We naturally also do not forbear from applying open Internet rules and section 706 of the 1996 Act itself. For convenience, we collectively refer to these provisions and regulations for purposes of this Order as the ''core broadband Internet access service requirements.''

457. Beyond those core broadband Internet access service requirements we

grant extensive forbearance as permitted by our authority under section 10 of the Act. As described in greater detail below, it is our predictive judgment that the statutory and regulatory requirements that remain are sufficient to ensure just, reasonable, and not unjustly or unreasonably discriminatory conduct by providers of broadband Internet access service and to protect consumers with respect to broadband Internet access service. Those same considerations, plus the overlay of section 706 of the 1996 Act and our desire to proceed incrementally when considering what new requirements that should apply here, likewise persuade us that this forbearance is in the public interest.

458. Our forbearance decision in this subsection focuses on addressing consequences arising from the classification decision in this Order regarding broadband Internet access service. (The *2014 Open Internet NPRM* here did not contemplate possible forbearance from the open Internet rules themselves, and thus they are beyond the scope of regulations addressed by this forbearance decision. In any case, the very reasons that persuade us to adopt the rules in the Order likewise demonstrate that forbearance from those rules would not satisfy the section 10(a) criteria here.) Thus, we do not forbear with respect to requirements to the extent that they already applied prior to this Order without regard to the classification of broadband Internet access service. For example, as discussed in greater detail below, this includes things like certain requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), as well as things like liability-limitation provisions that do not vary in application based on the classification of broadband Internet access service. Similarly, to the extent that provisions or regulations apply to an entity by virtue of other services it provides besides broadband Internet access service, the forbearance in this Order does not extend to that context. (This Order does not alter any additional or broader forbearance previously granted that already might encompass broadband Internet access service in certain circumstances, for example, insofar as broadband Internet access service, when provided by mobile providers, is a CMRS service. As one example, the Commission has granted some forbearance from section 310(d) for certain wireless licensees that meet the definition of ''telecommunications carrier,'' but section 310(d) is not itself framed in terms of ''common carriers'' or ''telecommunications carriers'' or providers of ''CMRS'' or the like, nor is it framed in terms of ''common carrier services,'' ''telecommunications services,'' ''CMRS services'' or the like. To the extent that such forbearance thus goes beyond the forbearance for wireless providers granted in this Order, this Order does not narrow or otherwise modify that pre-existing grant of forbearance. For clarity, we observe, however, that the broadband Internet access service covered by our open Internet rules is beyond the scope of a petition for forbearance from Verizon regarding certain broadband services that was deemed granted by operation of law on March 19, 2006.)

459. In addition, prior to this Order some incumbent local exchange carriers or other common carriers chose to offer Internet transmission services as telecommunications services subject to the full range of Title II requirements. Our forbearance with respect to broadband Internet access service does not encompass such services. As a result, such providers remain subject to the rights and obligations that arise under Title II and the Commission's rules by virtue of their elective provision of such services, (For example, if a rate-of-return incumbent LEC (or other provider) voluntarily offers Internet transmission outside the forbearance framework adopted in this Order, it remains subject to the pre-existing Title II rights and obligations, including those from which we forbear in this Order.) along with the rules adopted to preserve and protect the open Internet to the extent that those services fall within the scope of those rules. (If such a provider wants to change to offer Internet access services pursuant to the construct adopted in this Order, it should notify the Wireline Competition Bureau 60 days prior to implementing such a change.)

1. Provisions That Protect Customer Privacy, Advance Access for Persons With Disabilities, and Foster Network Deployment

460. We generally grant extensive forbearance from the provisions and requirements that newly apply by virtue of our classification of broadband Internet access service. However, the record persuades us that we should not forbear with respect to certain key provisions that protect customer privacy, advance access for persons with disabilities, and foster network deployment.

a. Customer Privacy (Section 222)

461. As supported by a number of commenters, we decline to forbear from applying section 222 of the Act in the case of broadband Internet access service. We do, however, find the section 10(a) criteria met to forbear at this time from applying our implementing rules, pending the adoption of rules to govern broadband Internet access service in a separate rulemaking proceeding. Section 222 of the Act governs telecommunications carriers' protection and use of information obtained from their customers or other carriers, and calibrates the protection of such information based on its sensitivity. Congress provided protections for proprietary information, according the category of customer proprietary network information (CPNI) the greatest level of protection. Section 222 imposes a duty on every telecommunications carrier to protect the confidentiality of its customers' private information. Section 222 also imposes restrictions on carriers' ability to use, disclose, or permit access to customers' CPNI without their consent.

462. We find that forbearance from the application of section 222 with respect to broadband Internet access service is not in the public interest under section 10(a)(3), and that section 222 remains necessary for the protection of consumers under section 10(a)(2). The Commission has long supported protecting the privacy of users of advanced services, and retaining this provision thus is consistent with the general policy approach. The Commission has emphasized that ''[c]onsumers' privacy needs are no less important when consumers communicate over and use broadband Internet access than when they rely on [telephone] services.'' As broadband Internet access service users access and distribute information online, the information is sent through their broadband provider. Broadband providers serve as a necessary conduit for information passing between an Internet user and Internet sites or other Internet users, and are in a position to obtain vast amounts of personal and proprietary information about their customers. Absent appropriate privacy protections, use or disclosure of that information could be at odds with those customers' interests.

463. We find that if consumers have concerns about the privacy of their personal information, such concerns may restrain them from making full use of broadband Internet access services and the Internet, thereby lowering the

likelihood of broadband adoption and decreasing consumer demand. As the Commission has found previously, the protection of customers' personal information may spur consumer demand for those services, in turn ''driving demand for broadband connections, and consequently encouraging more broadband investment and deployment'' consistent with the goals of the 1996 Act. Notably, commenters opposing the application of section 222 to broadband Internet access service make general arguments about the associated burdens, but do not include a meaningful analysis of why the section 10(a) criteria are met (or why relief otherwise should be granted) nor why the concerns they identify—even assuming *arguendo* that they were borne out by evidence beyond that currently in the record—should outweigh the privacy concerns identified here. We therefore conclude that the application and enforcement of section 222 to broadband Internet access services is in the public interest, and necessary for the protection of consumers. (We are not persuaded that those arguments justify a different outcome here, both for the reasons discussed previously, and because commenters do not meaningfully explain how these arguments impact the section 10 analysis here, given that the need to protect consumer privacy is not self-evidently linked to such marketplace considerations. Nothing in the record suggests that concerns about consumer privacy are limited to broadband providers of a particular size, and we thus are not persuaded that a different conclusion in our forbearance analysis should be reached in the case of small broadband providers, for example.)

464. We also reject arguments that section 706 itself provides adequate protections such that forbearance from section 222 is warranted. While section 706 of the 1996 Act would continue to apply even if we granted forbearance here, we find that section 222 provides a more certain foundation for evaluating providers' conduct and pursuing enforcement if warranted in relevant circumstances arising in the future. (We also note, for example, that this approach obviates the need to determine whether or to what extent section 222 is more specific than section 706 of the 1996 Act in relevant respects, and thus could be seen as exclusively governing over the provisions of section 706 of the 1996 Act as to some set of privacy issues. The approach we take avoids this potential uncertainty, and we thus need not and do not address this question.) Among other things, while the concerns discussed in the preceding paragraph have a nexus with the standards of sections 706(a) and (b), as discussed earlier in this section, the public interest in protecting customer privacy is not limited to the universe of concerns encompassed by section 706.

465. We recognize that some commenters, while expressing concern about consumer privacy, nonetheless suggest that the Commission conceivably need not immediately apply section 222 and its implementing rules, pending further proceedings. (While CDT references the questions regarding the application of section 222 and our implementing rules raised in the *2010 Broadband Classification NOI,* that *NOI* cited reasons why the Commission might immediately apply section 222 and the Commission's implementing rules if it reclassified broadband Internet access service as well as reasons why it might defer the application of those requirements. We thus find that the *2010 NOI* does not itself counsel one way or the other, and in light of the record here, we decline to defer the application of section 222) We are persuaded by those arguments, but only as to the Commission's rules. With respect to the application of section 222 of the Act itself, as discussed above, with respect to broadband Internet access service the record here persuades us that the section 10(a) forbearance criteria are not met to justify such relief. Indeed, even as to services that historically have been subject to section 222, questions about the application of those privacy requirements can arise and must be dealt with by the Commission as technology evolves, and the record here does not demonstrate specific concerns suggesting that Commission clarification of statutory terms as needed would be inadequate in this context.

466. We are, however, persuaded that the section 10(a) criteria are met for us to grant forbearance from applying our rules implementing section 222 insofar as they would be triggered by the classification of broadband Internet access service here. Beyond the core broadband Internet access service requirements, we apply section 222 of the Act, which itself directly provides important privacy protections. Further, on this record, we are not persuaded that the Commission's current rules implementing section 222 necessarily would be well suited to broadband Internet access service. The Commission fundamentally modified these rules in various ways subsequent to decisions classifying broadband Internet access service as an information service, and certain of those rules appear more focused on concerns that have been associated with voice service. For example, the current rules have requirements with respect to ''call detail information,'' defined as ''[a]ny information that pertains to the transmission of specific telephone calls, including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.'' More generally, the existing CPNI rules do not address many of the types of sensitive information to which a provider of broadband Internet access service is likely to have access, such as (to cite just one example) customers' web browsing history. Insofar as rules focused on addressing problems in the voice service context are among the central underpinnings of our CPNI rules, we find the better course to be forbearance from applying all of our CPNI rules at this time. As courts have recognized, when exercising its section 10 forbearance authority ''[g]uided by section 706,'' the Commission permissibly may ''decide[ ] to balance the future benefits'' of encouraging broadband deployment ''against [the] short term impact'' from a grant of forbearance. In light of the record here and given that the core broadband Internet access requirements and section 222 itself will apply, and guided by section 706, we find that applying our current rules implementing sections 222—which, in critical respects, appear to be focused on addressing problems that historically arise regarding voice service—is not necessary to ensure just and reasonable rates and practice or for the protection of consumers under sections 10(a)(1) and (a)(2) and that forbearance is in the public interest under section 10(a)(3). We emphasize, however, that forbearance from our existing CPNI rules in the context of broadband Internet access services does not in any way diminish the applicability of these rules to services previously found to be within their scope.

b. Disability Access Provisions (Sections 225, 255, 251(a)(2))

467. We agree with commenters that we should apply section 225 and the Commission's implementing rules—rather than forbear for broadband Internet access service—because of the need to ensure meaningful access to all Americans, except to the extent provided below with respect to contributions to the Interstate TRS Fund. Section 225 mandates the availability of interstate and intrastate

TRS to the extent possible and in the most efficient manner to individuals in the United States who are deaf, hard of hearing, deaf-blind, and who have speech disabilities. The Act directs that TRS provide the ability for such individuals to engage in communication with other individuals, in a manner that is ''functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.'' To achieve this, the Commission has required all interstate service providers (other than one-way paging services) to provide TRS. People who are blind, hard of hearing, deaf-blind, and who have speech disabilities increasingly rely upon Internet-based video communications, both to communicate directly (point-to-point) with other persons who are deaf or hard of hearing who use sign language and through video relay service (VRS) with individuals who do not use the same mode of communication that they do. In doing so, they rely on high definition two-party or multiple-party video conferencing that necessitates a broadband connection. As technologies advance, section 225 maintains our ability to ensure that individuals who are deaf, hard of hearing, deaf-blind, and who have speech disabilities can engage in service that is functionally equivalent to the ability of a hearing individuals who do not have speech disabilities to use voice communication services. Limits imposed on bandwidth use through network management practices that might otherwise appear neutral, could have an adverse effect on iTRS users who use sign language to communicate by degrading the underlying service carrying their video communications. The result could potentially deny these individuals functionally equivalent communications service. Additionally, if VRS and other iTRS users are limited in their ability to use Internet service or have to pay extra for iTRS and point-to-point services, this could cause discrimination against them because for many such individuals, TRS is the only form of communication that affords service that is functionally equivalent to what voice users have over the telephone. Moreover, limiting their bandwidth capacity could compromise their ability to obtain access to emergency services via VRS and other forms of iTRS, which is required by the Commission's rules implementing section 225.

468. While we base the open Internet rules adopted here solely on section 706 of the 1996 Act and other provisions of the Act besides section 225—and thus do not adopt any new section 225-based rules in this Order—largely preserving this provision is important not only to the extent that it might be used in the future as the basis for new rules adopting additional protections but also to avoid any inadvertent uncertainty regarding Internet-based TRS providers' obligations under existing rules. To be compensated from the federal TRS fund, providers must provide service in compliance with section 225 and the Commission's TRS rules and orders. As discussed in the prior paragraph, however, a number of TRS services are carried via users' broadband Internet access services. Forbearing from applying section 225 and our TRS service requirements would risk creating loopholes in the protections otherwise afforded users of iTRS services or even just uncertainty that might result in degradation of iTRS. More specifically, if we forbear from applying these provisions, we run the risk of allowing actions taken by Internet access service providers to come into conflict with the overarching goal of section 225, *i.e.,* ensuring that the communication services made available through TRS are functionally equivalent, that is, mirror as closely as possible the voice communication services available to the general public. Enforcement of this functional equivalency mandate will protect against such degradation of service. In sum, with the exception of TRS contribution requirements discussed below, we find that the enforcement of section 225 is necessary for the protection of consumers under section 10(a)(2), and that forbearance would not be in the public interest under section 10(a)(3).

469. Notwithstanding the foregoing, for now we do forbear in part from the application of TRS contribution obligations that otherwise would newly apply to broadband Internet access service. Section 225(d)(3)(B) and our implementing rules require federal TRS contributions for interstate telecommunications services, which now would uniformly include broadband Internet access service by virtue of the classification decision in this order. Applying new TRS contribution requirements on broadband Internet access potentially could spread the base of contributions to the TRS Fund, having the benefit of adding to the stability of the TRS Fund. Nevertheless, before taking any steps that would depart from the *status quo* in this regard, the Commission would like to assess the need for such additional funding, and the appropriate contribution level, given the totality of concerns implicated in this context. As courts have recognized, when exercising its section 10 forbearance authority ''[g]uided by section 706,'' the Commission permissibly may ''decide[ ] to balance the future benefits'' of encouraging broadband deployment ''against [the] short term impact'' from a grant of forbearance. Our decision, guided by section 706, to tailor the regulations applied to broadband Internet access service thus tips the balance in favor of the finding that applying new TRS fund contribution requirements at this time is not necessary to ensure just, reasonable and nondiscriminatory conduct by the provider of broadband Internet access service or for the protection of consumers under sections 10(a)(1) and (a)(2) and that forbearance is in the public interest under section 10(a)(3). The competing considerations here make this a closer call under our section 10(a) analysis, however, and thus we limit our action only to forbearing from applying section 225(d)(3)(B) and our implementing rules insofar as they would immediately require new TRS contributions from broadband Internet access services but not insofar as they authorize the Commission to require such contributions should the Commission elect to do so in a rulemaking in the future. In particular, we find it in the public interest to limit our forbearance in this manner to enable us to act even more nimbly in the future should we need to do so based on future developments.

470. Nothing in our forbearance from TRS Fund contribution requirements for broadband Internet access service is intended to encompass, however, situations where incumbent local exchange carriers or other common carriers voluntarily choose to offer Internet transmission services as telecommunications services subject to the full scope of Title II requirements for such services. As a result, such providers remain subject to the Interstate TRS Fund contribution obligations that arise under section 225 and the Commission's rules by virtue of their elective provision of such services until such time as the Commission further addresses such contributions in the future.

471. Consistent with some commenters' proposals, with respect to broadband Internet access service we also do not forbear from applying sections 255 and the associated rules, which require telecommunications service providers and equipment manufacturers to make their services and equipment accessible to individuals

with disabilities, unless not readily achievable. We also do not find the statutory forbearance test met for related protections afforded under section 251(a)(2) and our implementing rules, which precludes the installation of ''network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255.'' We therefore do not forbear from this provision and our associated rules. In prior proceedings, the Commission has emphasized its commitment to implementing the important policy goals of section 255 in the Internet service context. Evidence cited in the National Broadband Plan also demonstrated that, while broadband adoption has grown steadily, it ''lags considerably'' among certain groups, including individuals with disabilities. Adoption of Internet access services by persons with disabilities can enable these individuals to achieve greater productivity, independence, and integration into society in a variety of ways. (Moreover, broadband can make telerehabilitation services possible, by providing long-term health and vocational support within the individual's home. Broadband can also provide increased access to online education classes and digital books and will offer real time interoperable voice, video and text capabilities for E911. In addition, as commenters note, ''society as a whole'' can ''benefit[] when people with disabilities have access to [broadband Internet access] services in a manner equivalent to the non-disabled population.'' CFILC Dec. 17, 2014 *Ex Parte* Letter at 1.) These capabilities, however, are not available to persons with disabilities if they face barriers to Internet service usage, such as inaccessible hardware, software, or services. We anticipate that increased adoption of services and technologies accessible to individuals with disabilities will, in turn, spur further availability of such capabilities, and of Internet access services more generally.

472. Our forbearance analysis regarding sections 255, 251(a)(2), and our implementing rules also is informed by the incremental nature of the requirements imposed. In particular, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), expanding beyond the then-existing application of section 255, adopted new section 716 of the Act, which requires that providers of advanced communications services (ACS) and manufacturers of equipment used for ACS make their services and products accessible to people with disabilities, unless it is not achievable to do so. These mandates already apply according to their terms in the context of broadband Internet access service. The CVAA also adopted a requirement, in section 718, that ensures access to Internet browsers in wireless phones for people who are blind and visually impaired. In addition, the CVAA directs the Commission to enact regulations to prescribe, among other things, that networks used to provide ACS ''may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through . . . networks used to provide [ACS].'' Finally, new section 717 creates new enforcement and recordkeeping requirements applicable to sections 255, 716, and 718. Thus, a variety of accessibility requirements already have applied in the context of broadband Internet access service under the CVAA.

473. We are persuaded by the record of concerns about accessibility in the context of broadband Internet access service that we should not rest solely on the protections of the CVAA, however. But we do clarify the interplay of those provisions. At the time of section 255's adoption in the 1996 Act, Congress stated its intent to ''foster the design, development, and inclusion of new features in communications technologies that permit more ready accessibility of communications technology by individuals with disabilities . . . as preparation for the future given that a growing number of Americans have disabilities.'' More recently, Congress adopted the CVAA after recognizing that since it added section 255 to the Communications Act, ''Internet-based and digital technologies . . . driven by growth in broadband . . . are now pervasive, offering innovative and exciting ways to communicate and share information.'' Congress thus clearly had Internet-based communications technologies in mind when enacting the accessibility provisions of sections section 716 (as well as the related provisions of sections 717 through 718), and in providing important protections with respect to ACS. Thus, insofar as there is any conflict between the requirements of sections 255, 251(a)(2), and our implementing rules, on the one hand, and sections 716 through 718 and our implementing rules on the other hand, we interpret the latter requirements as controlling. On the other hand, insofar as sections 255, 251(a)(2), and our implementing rules impose different requirements that are reconcilable with the CVAA, we find it appropriate to apply those additional protections in the context of broadband Internet access service for the reasons described above. (We recognize that the Commission previously has held that ''[s]ection 2(a) of the CVAA exempts entities, such as Internet service providers, from liability for violations of section 716 when they are acting only to transmit covered services or to provide an information location tool. Thus, service providers that merely provide access to an electronic messaging service, such as a broadband platform that provides an end user with access to a web-based email service, are excluded from the accessibility requirements of section 716.'' Our decision here is not at odds with Congress' approach to such services under the CVAA, however, because we also have found that ''relative to section 255, section 716 requires a higher standard of achievement for covered entities.'' Thus, under our decision here, broadband Internet access service will remain excluded from the ''higher standard of achievement'' required by the CVAA to the extent provided by that law, and instead will be subject to the lower standard imposed under section 255 in those cases where the CVAA does not apply.) Thus, for example, outside the self-described scope of the CVAA, providers of broadband Internet access services must ensure that network services and equipment do not impair or impede accessibility pursuant to the sections 255/251(a)(2) framework. (Because this section requires pass through of telecommunications in an accessible format, and 47 CFR 14.20(c) requires pass through of ACS in an accessible format, the two sections work in tandem with each other, and forbearance from sections 255 and 251(a)(2) would therefore result in a diminution of accessibility.) In particular, we find that these provisions and regulations are necessary for the protection of consumers and forbearance would not be in the public interest. (We recognize that section 716 provides that ''[t]he requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 of this title on the day before October 8, 2010. Such services and equipment shall remain subject to the requirements of section 255 of this title.'' 47 U.S.C. 617(f). We do not read that as requiring that section 716 must necessarily be mutually exclusive with section 255, however. Had Congress wished to achieve that result, it easily instead could have stated that ''the

requirements of this section shall not apply to any equipment or services . . . that are subject to the requirements of section 255'' (or vice versa) and left it at that. By also including the limiting language ''that are subject to the requirements of section 255 of this title on the day before October 8, 2010,'' we believe the statute reasonably is interpreted as leaving open the option that services that become subject to section 255 thereafter also could be subject to both the requirements of section 255 and the requirements of the CVAA. Indeed, although broadband Internet access previously was classified as an information service and thus not subject to section 255 on October 8, 2010, at the time the CVAA was enacted the Commission had initiated the *2010 NOI* to consider whether to reclassify that service as a telecommunications service, which would, at that time, become subject to section 255 as a default matter.)

474. We reject the cursory or generalized arguments of some commenters that we need not apply these protections, or that we might defer doing so, pending further proceedings. For the reasons discussed above, with respect to broadband Internet access service the record here persuades us that the application of these requirements is necessary for the protection of consumers under section 10(a)(2) and that forbearance is not in the public interest under section 10(a)(3). Nor are we otherwise persuaded to stay or waive our implementing rules based on this record. Commenters opposing the application of these protections with respect to broadband Internet access service either with no limit on time, or specifically in the near term, make general arguments about the associated burdens. However, they do not include a meaningful analysis of why the section 10(a) criteria are met (or why relief otherwise should be granted) nor why the concerns they identify—even assuming *arguendo* that they were borne out by evidence beyond that currently in the record—should outweigh the disability access concerns identified here. (Some commenters contend that the Commission should forbear from all of Title II based on generalized arguments about the marketplace, such as past network investment or changes in performance or price per megabit in the recent past. We are not persuaded that those arguments justify a different outcome as to any of the disability access provisions or requirements at issue in this section, both for the reasons discussed previously, and because commenters do not meaningfully explain how these arguments impact the section 10 analysis here, given that the need to protect disability access is not self-evidently linked to such marketplace considerations. Nothing in the record suggests that concerns about disability access are limited to broadband providers of a particular size, and we thus are not persuaded that a different conclusion in our forbearance analysis should be reached in the case of small broadband providers, for example.)

475. We also reject arguments that section 706 itself provides adequate protections such that forbearance from the disability access provisions of sections 225, 255 and 251(a)(2) and associated regulations is warranted. While section 706 of the 1996 Act would continue to apply even if we granted forbearance here, consistent with our conclusions in other sections, we find that these disability access provisions provide a more certain foundation for evaluating providers' conduct and pursuing enforcement if warranted in relevant circumstances arising in the future. (We also note, for example, that this approach obviates the need to determine whether or to what extent these disability access provisions are more specific than section 706 of the 1996 Act in relevant respects, and thus could be seen as exclusively governing over the provisions of section 706 of the 1996 Act as to some set of disability access issues. The approach we take avoids this potential uncertainty, and we thus need not and do not address this question.) Among other things, while our interest in ensuring disability access often may have a nexus with the standards of sections 706(a) and (b), the record does not reveal that the public interest in ensuring access for persons with disabilities is limited just to the universe of concerns encompassed by section 706.

476. In addition to the provisions discussed above, section 710 of the Act addresses hearing aid compatibility. Given the important additional protections for persons with disabilities enabled by this provision, (For reasons similar to those discussed in the text above regarding other disability access provisions, we do not find it in the public interest to grant forbearance from section 710 of the Act, nor do we find such forbearance otherwise warranted under the section 10(a) criteria.) we anticipate addressing the applicability of mobile wireless hearing aid compatibility requirements to mobile broadband Internet access service devices in the pending rulemaking proceeding. (We note that the Commission's existing implementing rules do not immediately impose the Commission's hearing aid compatibility requirements implementing section 710 of the Act on mobile wireless broadband providers by virtue of the classification decisions in this Order. We note, however, that certain obligations in the Commission's rules implementing section 255 addressing interference with hearing technologies and the effective wireless coupling to hearing aids, may be appropriately imposed on such providers by virtue of this Order, given our decision not to forbear from application of section 255 and its implementing regulations.)

c. Access to Poles, Ducts, Conduit and Rights-of-Way (section 224)

477. Consistent with the recommendations of certain broadband provider commenters, because we find that the section 10(a) criteria are not met, we decline to forbear from applying section 224 and the Commission's associated rules with respect to broadband Internet access service. Section 224 of the Act governs the Commission's regulation of pole attachments. The Commission has recognized repeatedly the importance of pole attachments to the deployment of communications networks, and we thus conclude that applying these provisions will help ensure just and reasonable rates for broadband Internet access service by continuing pole access and thereby limiting the input costs that broadband providers otherwise would need to incur. Leveling the pole attachment playing field for new entrants that offer solely broadband services also removes barriers to deployment and fosters additional broadband competition. For similar reasons we find that applying these provisions will protect consumers and advance the public interest under sections 10(a)(2) and (a)(3). (Some commenters contend that the Commission should forbear from all of Title II based on generalized arguments about the marketplace, such as past network investment or changes in performance or price per megabit in the recent past. We are not persuaded that those arguments justify a different outcome regarding section 224 and our associated rules, both for the reasons discussed previously, and because commenters do not meaningfully explain how these arguments impact the section 10 analysis here, given that the need for regulated access to access to poles, ducts, conduit, and rights-of-way is not self-evidently linked to such marketplace considerations. Nor does the record reveal that concerns about

adequate access to poles, ducts, conduit and rights-of-way are limited to broadband providers of a particular size, and we thus are not persuaded that these concerns would differ in the case of small broadband providers, for example.)

478. Further, in significant part, section 224 imposes obligations on utilities, as owners of poles, ducts, conduits, or rights-of-way, to ensure that cable operators and telecommunications carriers obtain access to poles on just, reasonable, and nondiscriminatory rates, terms and conditions. The definition of a utility, however, includes entities other than telecommunications carriers, and pole attachments themselves are not ''telecommunications services.'' Section 10 allows the Commission to forbear from statutory requirements and implementing regulations as applied to ''a telecommunications carrier or telecommunications service,'' or class thereof, if the statutory criteria are satisfied. To the extent that section 224 imposes obligations on entities other than telecommunications carriers, it is not within the Commission's authority to forbear from this provision and our implementing rules under section 10.

479. Moreover, even if the Commission could forbear from the entirety of section 224 notwithstanding the concerns with such forbearance noted above, it is doubtful that this approach would leave us with authority to regulate the rates for attachments used for broadband Internet access service. In particular, such forbearance seemingly would eliminate any requirements governing pole owners' rates for access to poles by telecommunications carriers or cable operators. Such an outcome would not serve the public interest.

480. We also are not persuaded that we could forbear exclusively from the telecom rate formula in section 224(e), and then adopt a lower rate—such as the cable rate—pursuant to section 224(b). In particular, applying the 'specific governs the general' canon of statutory interpretation, the Supreme Court interpreted the rate formulas in sections 224(d) and (e) as controlling, within their self-described scope, over the Commission's general authority to ensure just and reasonable rates for pole attachments under section 224(b). We question whether forbearing from applying section 224(e) would actually alter the scope of our authority under section 224(b), or if instead rates for carriers' telecommunications service attachments would remain governed by the (now forborne-from) section 224(e), leaving a void as to regulation of rates for such attachments. Further, attempting to use an approach like this to regulate pole rental rates more stringently to achieve lower rates, the Commission seemingly would be using forbearance to *increase* regulation. Given the deregulatory purposes underlying the adoption of section 10, we do not believe that the use of forbearance in that manner would be in the public interest.

481. Although we are not persuaded that forbearance would be appropriate to address these concerns, we are committed to avoiding an outcome in which entities misinterpret today's decision as an excuse to increase pole attachment rates of cable operators providing broadband Internet access service. To be clear, it is not the Commission's intent to see any increase in the rates for pole attachments paid by cable operators that also provide broadband Internet access service, and we caution utilities against relying on this decision to that end. This Order does not itself require any party to increase the pole attachment rates it charges attachers providing broadband Internet access service, and we would consider such outcomes unacceptable as a policy matter.

482. We note in this regard that in the *2011 Pole Attachment Order,* the Commission undertook comprehensive reform of pole attachment rules—including by revising the telecommunications rate formula for pole attachments in a way that ''generally will recover the same portion of pole costs as the current cable rate.'' As NCTA, COMPTEL and tw telecom observed following that *Order,* the Commission's ''expressed intent of providing rate parity between telecommunications providers and cable operators by amending the telecommunications formula to produce rates comparable to the cable formula—thereby removing the threat of potential rate increases associated with new services and reducing the incentives for pole owners to dispute the legal classification of communications services—will provide much-needed regulatory certainty that will permit broadband providers to extend their networks to unserved communities while fairly compensating pole owners.'' However, these parties also expressed concern that the particular illustration used by the Commission in the rule text could be construed as suggesting that the new formula includes only instances where there are three and five attaching entities, rather than providing the ''corresponding cost adjustments scaled to other entity counts.'' We are concerned by any potential undermining of the gains the Commission achieved by revising the pole attachment rates paid by telecommunications carriers. We accordingly will be monitoring marketplace developments following this Order and can and will promptly take further action in that regard if warranted.

483. To the extent that there is a potential for an increase in pole attachment rates for cable operators that also provide broadband Internet access service, we are highly concerned about its effect on the positive investment incentives that arise from new providers' access to pole infrastructure. We are encouraged by entry into the marketplace of parties that offer broadband Internet access service, and we believe that providing these new parties with access to pole infrastructure under section 224 would outweigh any hypothetical rise in pole attachment rates for some incumbent cable operators in some circumstances —particularly in light of our expressed intent to take prompt action if necessary to address the application of the Commission's pole rental rate formulas in a way that removes any doubt concerning the advancement of the goals intended by our 2011 reforms. Moreover, subsumed within our finding that today's decision does not justify any increase in pole attachment rates is an emphatic conclusion that no utility could impose any increase retroactively.

484. We also reject arguments that section 706 itself provides adequate protections such that forbearance from the pole access provisions of section 224 and related regulations is warranted. While section 706 of the 1996 Act would continue to apply even if we granted forbearance here, consistent with our conclusions in other sections, we find that section 224 and our implementing regulations provide a more certain foundation for evaluating providers' conduct and pursuing enforcement if warranted in relevant circumstances arising in the future. (We also note, for example, that this approach obviates the need to determine whether or to what extent section 224's pole access provisions are more specific than section 706 of the 1996 Act in relevant respects, and thus could be seen as exclusively governing over the provisions of section 706 of the 1996 Act as to some set of pole access issues. The approach we take avoids this potential uncertainty, and we thus need not and do not address this question.)

d. Universal Service Provisions (sections 254, 214(e))

485. We find the statutory test is met to grant certain forbearance under section 10(a) from applying sections 254(d), (g), and (k), as discussed below, but we otherwise will apply section 254, section 214(e) and our implementing rules with respect to broadband Internet access service, as recommended by a number of commenters. Section 254, the statutory foundation of our universal service programs, requires the Commission to promote universal service goals, including ''[a]ccess to advanced telecommunications and information services . . . in all regions of the Nation.'' Section 214(e) provides the framework for determining which carriers are eligible to participate in universal service programs. Even prior to the classification of broadband Internet access service adopted here, the Commission already supported broadband services to schools, libraries, and health care providers and supported broadband-capable networks in high-cost areas. Broadband Internet access service was, and is, a key focus of those universal service policies, and classification today simply provides another statutory justification in support of these policies going forward. Under our broader section 10(a)(3) public interest analysis, the historical focus of our universal service policies on advancing end-users' access to broadband Internet access service persuades us to give much less weight to arguments that we should proceed incrementally in this context. In particular, the Commission already has provided support for deployment of broadband-capable networks and imposed associated public interest obligations requiring the provision of broadband Internet access service. In connection with the Lifeline program, for instance, the Commission has established the goal of ''ensuring the availability of broadband service for low-income Americans.'' We therefore conclude that these universal service policy-making provisions of section 254, and the interrelated requirements of section 214(e), give us greater flexibility in pursuing those policies, and outweighs any limited incremental effects (if any) on broadband providers in this context. (We note that commenters opposing the application of section 254 as a whole (or those provisions of section 254 from which we do not forbear below) or arguing that such action could be deferred pending future proceedings, appear to make only generalized, non-specific arguments, which we do not find sufficient to overcome our analysis above. In addition, some commenters contend that the Commission should forbear from all of Title II based on generalized arguments about the marketplace, such as past network investment or changes in performance or price per megabit in the recent past. We are not persuaded that those arguments justify a different outcome regarding section 254, both for the reasons discussed previously, and because commenters do not meaningfully explain how these arguments impact the section 10 analysis here, given that, even taken at face value, arguments based on such marketplace considerations do not purport to sufficiently address the policy concerns underlying section 254 and our universal service programs. Nothing in the record suggests that we should tailor our advancement of universal service policies to broadband providers of a particular size, and we thus are not persuaded that a different conclusion in our forbearance analysis should be reached in the case of small broadband providers, for example.) Because forbearance would not be in the public interest under section 10(a)(3), we apply these provisions of section 254 and 214(e) and our implementing rules with respect to broadband Internet access service.

486. We also reject arguments that section 706 itself provides adequate protections such that forbearance from the provisions of sections 254 and 214(e) discussed above is warranted. While section 706 of the 1996 Act would continue to apply even if we granted forbearance here, we find that these provisions provide a more certain foundation for implementing our universal service policies and enforcing our associated rules, consistent with our conclusions in other sections. (We also note, for example, that this approach obviates the need to determine whether or to what extent these universal service provisions are more specific than section 706 of the 1996 Act in relevant respects, and thus could be seen as exclusively governing over the provisions of section 706 of the 1996 Act as to some set of universal issues. The approach we take avoids this potential uncertainty, and we thus need not and do not address this question.) Among other things, while our interest in ensuring universal service often may have a nexus with the standards of sections 706(a) and (b), the record does not reveal that the public interest in ensuring universal access is limited just to the universe of concerns encompassed by section 706.

487. Notwithstanding the foregoing, for now we do forbear in part from the first sentence of section 254(d) and our associated rules insofar as they would immediately require new universal service contributions associated with broadband Internet access service. The first sentence of section 254(d) authorizes the Commission to impose universal service contributions requirements on telecommunications carriers—and, indeed, goes even further to require ''[e]very telecommunications carrier that provides interstate telecommunications services'' to contribute. (In implementing that statutory provision, the Commission concluded that federal contributions would be based on end-user telecommunications revenues.) Under that provision and our implementing rules, providers are required to make federal universal service support contributions for interstate telecommunications services, which now would include broadband Internet access service by virtue of the classification decision in this order.

488. Consistent with our analysis of TRS contributions above, we note that on one hand, newly applying universal service contribution requirements on broadband Internet access service potentially could spread the base of contributions to the universal service fund, providing at least some benefit to customers of other services that contribute, and potentially also to the stability of the universal service fund through the broadening of the contribution base. We note, however, that the Commission has sought comment on a wide range of issues regarding how contributions should be assessed, including whether to continue to assess contributions based on revenues or to adopt alternative methodologies for determining contribution obligations. (Moreover, the Commission has referred the question of how the Commission should modify the universal service contribution methodology to the Federal-State Joint Board on Universal Service (Joint Board) and requested a recommended decision by April 7, 2015. We recognize that a short extension of that deadline for the Joint Board to make its recommendation to the Commission may be necessary in light of the action we take today. Our action in this Order thus will not ''short circuit'' the rulemaking concerning contributions issues as some commenters fear.) We therefore conclude that limited forbearance is warranted at the present time in order to allow the Commission to consider the issues presented based on a full record in that docket. (As noted below, we do not forbear from the mandatory

obligation of carriers that have chosen voluntarily to offer broadband as a Title II service to contribute to the federal universal service fund. Because we do nothing today to disturb the status quo with respect to current contributions obligations for the reasons explained above, and there will be a future opportunity to consider these issues in the contributions docket, we find that certain arguments raised in the record today are better taken up in that proceeding.)

489. As reiterated in our discussion of TRS contributions above, courts have recognized when exercising its section 10 forbearance authority ''[g]uided by section 706,'' the Commission permissibly may ''decide[] to balance the future benefits'' of encouraging broadband deployment ''against [the] short term impact'' from a grant of forbearance. Our decision, guided by section 706, to tailor the regulations applied to broadband Internet access service thus tips the balance in favor of the finding that applying new universal service fund contribution requirements at this time is not necessary to ensure just and reasonable rates and practices or for the protection of consumers under sections 10(a)(1) and (a)(2), and that forbearance is in the public interest under section 10(a)(3) while the Commission completes its pending rulemaking regarding contributions reform. (While some commenters cite regulatory parity as a reason not to forbear from universal service contribution requirements, they do not explain how such concerns are implicated insofar as every provider's broadband Internet access service is subject to this same forbearance from universal service contribution requirements. In any event, those arguments are better addressed in the contributions rulemaking docket based on the full record developed therein) The competing considerations here make this a closer call under our section 10(a) analysis, however, and thus as in the TRS contribution context, we limit our action only to forbearing from applying the first sentence of section 254(d) and our implementing rules insofar as they would immediately require new universal service contributions for broadband Internet access services sold to end users but not insofar as they authorize the Commission to require such contributions in a rulemaking in the future. Thus, while broadband Internet access services will not be subject to new universal service contributions at this time, our action today is not intended to prejudge or limit how the Commission may proceed in the future. (Because our action today precludes for the time being federal universal service contribution assessments on broadband Internet access services that are not currently assessed, we conclude that any state requirements to contribute to state universal service support mechanisms that might be imposed on such broadband Internet access services would be inconsistent with federal policy and therefore are preempted by section 254(f)—at least until such time that the Commission rules on whether to require federal universal service contributions by providers of broadband Internet access service. We note that we are not aware of any current state contribution obligation for broadband Internet access service; our understanding is that broadband providers that voluntarily offer Internet transmission as a Title II service treat 100 percent of those revenues as interstate. We recognize that section 254 expressly contemplates that states will take action to preserve and advance universal service, and our actions in this regard will benefit from further deliberation.)

490. Nothing in our forbearance with respect to the first sentence of section 254(d) for broadband Internet access service is intended to encompass, however, situations where incumbent local exchange carriers or other common carriers voluntarily choose to offer Internet transmission services as telecommunications services subject to the full scope of Title II requirements for such services. As a result, such providers remain subject to the mandatory contribution obligations that arise under section 254(d) and the Commission's rules by virtue of their elective provision of such services until such time as the Commission further addresses contributions reform in the pending proceeding.

491. We also forbear from applying sections 254(g) and (k) and our associated rules. Section 254(g) requires ''that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.'' Section 254(k) prohibits the use of revenues from a non-competitive service to subsidize a service that is subject to competition. Commenters' arguments to apply provisions of section 254 appear focused on the provisions dealt with above—*i.e.,* provisions providing for support of broadband networks or services or addressing universal service contributions—and do not appear to focus at all on why we should not forbear from applying the requirements of sections 254(g) and (k) and our implementing rules. In particular, consistent with the more detailed discussion in our analysis below, we are not persuaded that applying these provisions is necessary for purposes of sections 10(a)(1) and (a)(2), particularly given the availability of the core broadband Internet access service requirements. Likewise, under the tailored regulatory approach we find warranted here, informed by our responsibilities under section 706, we conclude that forbearance from enforcing sections 254(g) and (k) is in the public interest under section 10(a)(3). We thus forbear from applying these provisions insofar as they would be newly triggered by the classification of broadband Internet access service in this Order. Nothing in our forbearance with respect to section 254(k) for broadband Internet access service is intended to encompass, however, situations where incumbent local exchange carriers or other common carriers voluntarily choose to offer Internet transmission services as telecommunications services subject to the full scope of Title II requirements such services. As a result, such providers remain subject to the obligations that arise under section 254(k) and the Commission's rules by virtue of their elective provision of such services. (For example, if a rate-of-return incumbent LEC (or other provider) voluntarily offers Internet transmission outside the forbearance framework adopted in this Order, it remains subject to the pre-existing Title II rights and obligations, including those from which we forbear in this Order.)

2. Broad Forbearance From 27 Title II Provisions for Broadband Internet Access Service

492. Beyond those core broadband Internet access service requirements we grant extensive forbearance as permitted by our authority under section 10 of the Act based on our predictive judgment regarding the adequacy of other protections where needed, coupled with the role of section 706 of the 1996 Act and our desire to tailor the requirements that should apply here, likewise persuade us that this forbearance is in the public interest. The analyses and forbearance decisions regarding broadband Internet access service reflect the broad support in the record for expansive forbearance. With respect to proposals to retain particular statutory provisions or requirements, we are not persuaded by the record here that forbearance is not justified for the reasons discussed below.

493. As a threshold matter, we reject arguments from certain commenters that include bare assertions that we should not forbear as to particular provisions or regulations without any meaningful supporting analysis or discussion under the section 10(a) framework. To the extent that these commenters argue for a narrower result than the forbearance we grant here, such conclusory arguments do not undercut our finding that the section 10(a) criteria are met as to the forbearance granted here with respect to broadband Internet access service. For similar reasons we reject arguments that the Commission should ''exempt from forbearance . . . Section 228 . . . provid[ing] customers with protections from abusive practices by pay-per-call service providers'' insofar as they do not explain how such a provision meaningfully would apply in the context of broadband Internet access service or why the section 10(a) criteria are not met in that context. As a result, these arguments do not call into question our section 10(a) findings below in the context of the broadband Internet access service. With respect to proposals to retain other statutory provisions, we conclude that commenters fail to demonstrate at this time that other, applicable requirements or protections are inadequate, for the reasons discussed below.

494. For each of the remaining statutory and regulatory obligations triggered by our classification decision, the realities of the near-term past under the prior ''information service'' classification inform our section 10(a) analysis. Although that practical baseline is not itself dispositive of the appropriate regulatory treatment of broadband Internet access service, the record reveals numerous concerns about the burdens—or, at a minimum, regulatory uncertainty—that would be fostered by a sudden, substantial expansion of the actual or potential regulatory requirements and obligations relative to the *status quo* from the near-term past. (We are not persuaded by arguments that a tailored regulatory approach like that adopted here inherently would be inferior to the adoption of a more regulatory approach in this Order. Rather, we base our decision to adopt such a tailored approach based both on our own analysis of the overall record regarding investment incentives (which can involve multifaceted considerations), and the wisdom we see in exercising our discretion to proceed incrementally, as discussed in greater detail below.) It is within the agency's discretion to proceed incrementally, and we find that adopting an incremental approach here—by virtue of the forbearance granted here—guards against any unanticipated and undesired detrimental effects on broadband deployment that could arise. We note in this regard that when exercising its section 10 forbearance authority ''[g]uided by section 706,'' the Commission permissibly may ''decide[ ] to balance the future benefits'' of encouraging broadband deployment ''against [the] short term impact'' from a grant of forbearance. Under the section 10(a) analysis, we are particularly persuaded to give greater weight at this time to the likely benefits of proceeding incrementally given the speculative or otherwise limited nature of the arguments in the current record regarding the possible near-term harms from forbearance of the scope adopted here.

495. We further conclude that our analytical approach as to all the provisions and regulations from which we forbear in this Order is consistent with section 10(a). Under section 10(a)(1), we consider here whether particular provisions and regulations are ''necessary'' to ensure ''just and reasonable'' conduct by broadband Internet access service providers. Interpreting those ambiguous terms, we conclude that we reasonably can account for policy trade-offs that can arise under particular regulatory approaches. (While the specific balancing at issue in *EarthLink* v. *FCC,* 462 F.3d at 8–9, may have involved trade-offs regarding competition, we nonetheless believe the view expressed in that decision accords with our conclusion here that we permissibly can interpret and apply all the section 10(a) criteria to also reflect the competing policy concerns here. As the D.C. Circuit also has observed, within the statutory framework that Congress established, the Commission ''possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband.'') For one, we find it reasonable in the broadband Internet access service context for our interpretation and application of section 10(a)(1) to be informed by section 706 of the 1996 Act. (Given the characteristics specific to broadband Internet access service that we find on the record here—including, among other things, protections from the newly-adopted open Internet rules and the overlay of section 706—we limit our forbearance from the relevant provisions and regulations to the context of broadband Internet access service. Outside that context, they will continue to apply as they have previously, unaffected by this Order. We thus reject claims that the actions or analysis here effectively treat forborne-from provisions or regulations as surplusage or that we are somehow ignoring significant portions of the Act.) As discussed above, section 706 of the 1996 Act ''explicitly directs the FCC to 'utiliz[e]' forbearance to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,' '' and our recent negative section 706(b) determination triggers a duty under section 706 for the Commission to ''take immediate action to accelerate deployment.'' As discussed in greater detail below, a tailored regulatory approach avoids disincentives for broadband deployment, which we weigh in considering what outcomes are just and reasonable—and whether the forborne-from provisions are necessary to ensure just and reasonable conduct—under our section 10(a)(1) analyses in this item. Furthermore, our forbearance in this Order, informed by recent experience and the record in this proceeding, reflects the recognition that, beyond the specific bright-line rules adopted above, particular conduct by a broadband Internet access service provider can have mixed consequences, rendering case-by-case evaluation superior to bright-line rules. Consequently, based on those considerations, it is our predictive judgment that, outside the bright line rules applied under this Order, just and reasonable conduct by broadband providers is better ensured under section 10(a)(1) by the case-by-case regulatory approach we adopt—which enables us to account for the countervailing policy implications of given conduct—rather than any of the more bright-line requirements that would have flowed from the provisions and regulations from which we forbear. (As explained above, we conclude that while competition can be a sufficient basis to grant forbearance, it is not inherently necessary in order to find section 10 satisfied. Given our assessment of the advantages of the regulatory framework applied under this Order, we also reject suggestions that, where the Commission does not rely on sufficient competition to justify forbearance, alternative *ex ante* regulations would always be necessary to ensure just and reasonable conduct and otherwise provide a basis for finding the section 10(a) criteria to be met. Further, while the Final Regulatory Flexibility Analysis estimates a large

possible universe of broadband Internet access service providers, we do not find a basis to conclude that they all—or a sufficiently significant number of them—are likely to be simultaneously subject to complaints to render the case-by-case approach unworkable or inferior to additional bright line rules, and thus reject concerns to the contrary.) These same considerations underlie our section 10(a)(2) analyses, as well, since advancing broadband deployment and ensuring appropriately nuanced evaluations of the consequences of broadband provider conduct better protects consumers. Likewise, these same policy considerations are central to the conclusion that the forbearance granted in this Order, against the backdrop of the protections that remain, best advance the public interest under section 10(a)(3).

a. Tariffing (Sections 203, 204)

496. We find the section 10(a) criteria met and forbear from applying section 203 of the Act insofar as it newly applies to providers by virtue of our classification of broadband Internet access service. That provision requires common carriers to file a schedule of rates and charges for interstate common carrier services. As a threshold matter, we find broad support in the record for expansive forbearance, as discussed above. Moreover, as advocated by some commenters, it is our predictive judgment that other protections that remain in place are adequate to guard against unjust and unreasonable and unjustly and unreasonably discriminatory rates and practices in accordance with section 10(a)(1) and to protect consumers under section 10(a)(2). We likewise conclude that those other protections reflect the appropriate calibration of regulation of broadband Internet access service at this time, such that forbearance is in the public interest under section 10(a)(3).

497. As discussed below, sections 201 and 202 of the Act and our open Internet rules are designed to preserve and protect Internet openness, prohibiting unjust and unreasonable and unjustly or unreasonably discriminatory conduct by providers of broadband Internet access service for or in connection with broadband Internet access service and protecting the retail mass market customers of broadband Internet access service. In particular, under our open Internet rules and the application of sections 201 and 202, we establish both *ex ante* legal requirements and a framework for case-by-case evaluations governing broadband providers' actions. In calibrating the legal framework in that manner, we consider, among other things, the operation of the marketplace in conjunction with open Internet protections. It is our predictive judgment that these protections will be adequate to protect the interests of consumers—including the interest in just, reasonable, and nondiscriminatory conduct—that might otherwise be threatened by the actions of broadband providers. Importantly, broadband providers also are subject to complaints and Commission enforcement in the event that they violate sections 201 or 202 of the Act, the open Internet rules, or other elements of the core broadband Internet access requirements. We thus find on the record here that section 203's requirements are not necessary to ensure just and reasonable and not unjustly or unreasonably discriminatory rates and practices under section 10(a)(1) nor for the protection of consumers under 10(a)(2).

498. The predictive judgment underlying our section 10 analysis is informed by recent experience. Historically, tariffing requirements were not applied to broadband Internet access service under our prior ''information service'' classification. This provides us a practical reference point as part of our overall evaluation of the types of concerns that are likely to arise in this context, underlying our predictive judgment regarding the sufficiency of the rules and requirements that remain. Consequently, providers will not be subject to *ex ante* rate regulation nor any requirement of advanced Commission approval of rates and practices as otherwise would have been imposed under section 203.

499. We also find that the forbearance for broadband Internet access service satisfies sections 10(a)(1) and (a)(2) and is consistent with the public interest under section 10(a)(3) in light of the objectives of section 706. In addition to our specific conclusions above, we find more broadly that forbearing from section 203 is consistent with the overall approach that we conclude strikes the right regulatory balance for broadband Internet access service at this time. In particular, given the overlay of section 706 of the 1996 Act, we conclude that the better approach at this time is to focus on applying the core broadband Internet access service requirements rather than seeking to apply the additional provisions and regulations triggered by the classification of broadband Internet access service from which we forbear. As explained above, section 706 of the 1996 Act ''explicitly directs the FCC to 'utiliz[e]' forbearance to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.' '' The D.C. Circuit has further held that the Commission ''possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband.'' We find that the scope of forbearance adopted in this order strikes the right balance at this time between, on the one hand, providing the regulatory protections clearly required by the evidence and our analysis to, among other things, guard the virtuous cycle of Internet innovation and investment and, on the other hand, avoiding additional regulations that do not appear required at this time and that risk needlessly detracting from providers' broadband investments.

500. Additionally, section 10(b) requires the Commission, as part of its public interest analysis, to analyze the impact forbearance would have on competitive market conditions. Although there is some evidence of competition for broadband Internet access service, it appears to be limited in key respects, and the record also does not provide a strong basis for concluding that the forbearance granted in this Order is likely to directly impact the competitiveness of the marketplace for broadband Internet access services. We note that the forbearance we grant is part of an overall regulatory approach designed to promote infrastructure investment in significant part by preserving and promoting innovation and competition at the edge of the network. Thus, even if the grant of forbearance does not directly promote competitive market conditions, it does so indirectly by enabling us to strike the right balance at this time in our overall regulatory approach. Our regulatory approach, viewed broadly, thus does advance competition in important ways. Ultimately, however, while we consider the section 10(b) criteria in our section 10(a)(3) public interest analysis, our public interest determination rests on other grounds. In particular, under the entirety of our section 10(a)(3) analysis, as discussed above, we conclude that the public interest supports the forbearance adopted in this Order. (These same section 10(b) findings likewise apply in the case of our other section 10(a)(3) public interest evaluations with respect to broadband Internet access service, and should be understood as incorporated there.)

501. We thus are not persuaded by other commenters arguing that the Commission's ability to forbear from section 203 depends on findings of sufficient competition. As explained above, persuasive evidence of

competition is not the sole possible grounds for granting forbearance. As also explained above, we conclude at this time that the Open Internet rules and other elements of the core broadband Internet access service requirements meet our identified needs in this specific context. The Commission also has recognized previously that tariffing imposes administrative costs. We also consider our objective of striking the right balance of a regulatory and deregulatory approach, consistent with section 706 of the 1996 Act. (Indeed, even when forbearing from section 203 in the CMRS context, the Commission not only relied in part on the presence of competition, but also that continued application of sections 201, 202, and 208 ''provide[s] an important protection in the event there is a market failure,'' and ''tariffing imposes administrative costs and can themselves be a barrier to competition in some circumstances.'' Those are in accord with key elements of our conclusions here.) Collectively, these persuade us not to depart from the section 10(a) analysis above, irrespective of the state of competition.

502. Nor are we persuaded by commenters' specific arguments that tariffs filed under section 203 provide ''the necessary information to distinguish between providers'' and thus should not be subject to forbearance for broadband Internet access service. As certain of these commenters themselves note, such objectives might be met in other ways. To the extent that disclosures regarding relevant broadband provider practices are needed, our Open Internet transparency rule is designed to serve those ends. Commenters do not meaningfully explain why the transparency rule is inadequate, and thus their arguments do not persuade us to depart from our section 10(a) findings above in the case of section 203.

503. We likewise reject the proposals of other commenters that we structure our forbearance from section 203 to permissively, rather than mandatorily, detariff broadband Internet access service. As a threshold matter, we note that, as discussed above, our forbearance with respect to broadband Internet access services does not encompass incumbent local exchange carriers or other common carriers that offer Internet transmission services as telecommunications services subject to the full range of Title II requirements under the pre-existing legal framework, which does provide for permissive detariffing. Under the framework adopted in this Order, however, we are not persuaded that our open Internet rules provide for readily administrable evaluation of the justness and reasonableness of tariff filings. Nor does the record reveal that we can rely on competitive constraints to help ensure the justness and reasonableness of tariff filings. Furthermore, as the Commission previously has recognized, permitting voluntary tariff filings can raise a number of public interest concerns, and consistent with those findings, we mandatorily detariff broadband Internet access service for purposes of the regulatory framework adopted in this Order.

504. Some commenters also advocate that the Commission retain section 204. Section 204 provides for Commission investigation of a carrier's rates and practices newly filed with the Commission, and to order refunds, if warranted. For the reasons described above, however, we forbear from sections 203's tariffing requirements for broadband Internet access service, and adopt mandatory detariffing. Given that decision, commenters do not indicate what purpose section 204 still would serve, and we thus do not depart in this context from our overarching section 10(a) forbearance analysis above.

b. Enforcement-Related Provisions (Sections 205, 212)

505. We find forbearance from applying certain enforcement-related provisions of Title II beyond the core Title II enforcement authority discussed above warranted under section 10(a), and we reject arguments to the contrary. Section 205 provides for Commission investigation of existing rates and practices and to prescribe rates and practices if it determines that the carrier's rates or practices do not comply with the Communications Act. The Commission previously has forborne from enforcing section 205 where it sought to adopt a tailored, limited regulatory environment and where, notwithstanding that forbearance, given the continued application of sections 201 and 202 and other complaint processes. For similar reasons here, we find at this time that the core Title II enforcement authority, along with the ability to pursue claims in court, as discussed below, provide adequate enforcement options and the statutory forbearance test is met for section 205. Consistent with our analysis above, it thus is our predictive judgment that these provisions are not necessary to ensure just, reasonable and nondiscriminatory conduct by providers of broadband Internet access service or to protect consumers under sections 10(a)(1) and (a)(2). In addition, as above, under the tailored regulatory approach we find warranted here, informed by our responsibilities under section 706, we conclude that forbearance is in the public interest under section 10(a)(3). We thus reject claims that forbearance from section 205, insofar as it is triggered by our classification of broadband Internet access service, is not warranted. (Although Public Knowledge et al. cite marketplace differences between CMRS and broadband Internet access service, they do not explain why those differences necessitate a narrower forbearance decision in this context—particularly since we do not rely on the state of competition as a rationale for our forbearance decision—whether as to section 205, or as to the other provisions discussed there (sections 204, 211, 212).)

506. We also forbear from applying section 212 to the extent that it newly applies by virtue of our classification of broadband Internet access service. Section 212 empowers the Commission to monitor interlocking directorates, *i.e.*, the involvement of directors or officers holding such positions in more than one common carrier. In the CMRS context, the Commission granted forbearance from section 212 on the grounds that forbearance would reduce regulatory burdens without adversely affecting rates in the CMRS market. The Commission noted that section 212 was originally placed in the Communications Act to prevent interlocking officers from engaging in anticompetitive practices, such as price fixing. The Commission found, however, that protections of section 201(b), 221, (The Commission noted that section 221 provided protections against interlocking directorates, but section 221(a) was repealed in the Telecommunications Act of 1996. This section gave the Commission the power to review proposed consolidations and mergers of telephone companies. While section 221(a) allowed the Commission to bolster its analysis to forbear from section 212 in the *Wireless Forbearance Order,* the protections against interlocking directorates provided by section 201(b) and 15 U.S.C. 19 provide sufficient protection to forbear from section 212 for broadband Internet access services.) and antitrust laws were sufficient to protect consumers against the potential harms from interlocking directorates. Forbearance also reduced an unnecessary regulatory cost imposed on carriers. The Commission later extended this forbearance to dominant carriers and carriers not yet found to be non-dominant, repealing part 62 of its rules and granting forbearance from the provisions of section 212. Commenters

have not explained why we should not find the protections of section 201(b) and antitrust law adequate here, as well. It likewise is our predictive judgment that other protections will adequately ensure just, reasonable, and nondiscriminatory conduct by providers of broadband Internet access service and protect consumers here, and thus conclude that the application of section 212 is not necessary for purposes of sections 10(a)(1) or (a)(2). Moreover, as above, under the tailored regulatory approach we find warranted here, informed by our responsibilities under section 706, we conclude that forbearance is in the public interest under section 10(a)(3).

c. Information Collection and Reporting Provisions (Sections 211, 213, 215, 218 Through 220)

507. In addition, although some commenters advocate that the Commission retain provisions of the Act that provide ''discretionary powers to compel production of useful information or the filing of regular reports,'' we find the section 10(a) factors met and grant forbearance. However, the cited provisions principally are used by the Commission to implement its traditional rate-making authority over common carriers. Here, we do not apply tariffing requirements or *ex ante* rate regulation of broadband Internet access service of the sort for which these requirements would be needed. Indeed, we cannot and do not envision adopting such requirements in the future. Thus, we do not find it necessary or in the public interest to apply these provisions simply in anticipation of such an exceedingly unlikely scenario. Moreover, as particularly relevant here, section 706 of the 1996 Act, along with other statutory provisions, give the Commission authority to collect necessary information. We recognize that the Commission generally did not forbear from these requirements in the CMRS context, noting the minimal regulatory burdens they imposed on such providers, and observing that reservation of this Commission authority would allow further consideration of possible information collection requirements, given that ''the cellular market is not yet fully competitive.'' As explained above, in this context, however, we find forbearance to be the more prudent course, and therefore in the public interest under section 10(a)(3), given both our intention of tailoring the regulations applicable to broadband Internet access service given our responsibility under section 706 to encourage deployment. Because we also do not find the information collection and reporting provisions raised by commenters to be necessary at this time within the meaning of sections 10(a)(1) and (a)(2), we forbear from applying these provisions insofar as they otherwise newly would apply by virtue of our classification of broadband Internet access service.

d. Discontinuance, Transfer of Control, and Network Reliability Approval (Section 214)

(Unless otherwise indicated, for convenience, this item uses ''discontinuance,'' to also include reduction or impairment of service under section 214.)

508. We also find section 10(a) met for purposes of forbearing from applying section 214 discontinuance approval requirements. We reject the arguments of some commenters that we should not forbear, which focus in particular on concerns about discontinuances in rural areas or areas with only one provider. As a threshold matter, our universal service rules are designed to advance the deployment of broadband networks, including in rural and high-cost areas. Notably, this includes certain public interest obligations on the part of high-cost universal service support recipients to offer broadband Internet access service. Consequently, these provide important protections, especially in rural areas or areas that might only have one provider. Further, the conduct standards in our open Internet rules provide important protections against reduction or impairment of broadband Internet access service short of the complete cessation of providing that service. Thus, while we agree with commenters regarding the importance of broadband Internet access service, including in rural areas or areas served by only one provider, the generalized arguments of those commenters do not explain why the protections described above, in conjunction with the core broadband Internet access service requirements more broadly, are not likely to be sufficient to guard against unjust or unreasonable conduct by providers of broadband Internet access service or to protect consumers.

509. Moreover, the Commission has recognized in the past that section 214 discontinuance requirements impose some costs, although the significance of those costs is greater where (unlike here) the marketplace for the relevant service is competitive. Further, as discussed above, we find the most prudent regulatory approach at this time is to proceed incrementally when adding regulations beyond what had been the prior *status quo.* (The overlay of section 706 of the 1996 Act here, including how it informs our decision to proceed incrementally, distinguishes this from the Commission's prior evaluation of relief from Title II for CMRS. Consequently, although we look to the precedent from the CMRS context—as we do other forbearance precedent—to the extent that it is instructive, the mere fact that we declined to forbear from applying a provision in the CMRS context does not demonstrate that we should continue to apply it here as some suggest.) Given those considerations, and against the backdrop of other protections here, as discussed above, commenters have not persuaded us that applying section 214 discontinuance requirements with respect to broadband Internet access service is necessary within the meaning of sections 10(a)(1) and (a)(2) or that forbearance would not be in the public interest under section 10(a)(3). We thus forbear from applying section 214 discontinuance requirements to the extent that they would be triggered by our classification of broadband Internet access service here.

510. We also reject arguments against forbearance from applying section 214 to enable the Commission to engage in merger review. As these commenters recognize, prior to this Order the Commission already has commonly reviewed acquisitions of or mergers among entities that provide broadband services. (For example, the Commission reviews all applications for transfer or assignment of a wireless license, including licenses used to provide broadband services, pursuant to section 310(d) of the Act to determine whether the applicants have demonstrated that the proposed transfer or assignment will serve the public interest, convenience, and necessity. As this review is not triggered by reclassification, nothing in this Order limits or otherwise affects our review under section 310.) Although these comments speculate about a future time when communications services have evolved in such a way that the Commission would lack some other basis for its review, the record here does not demonstrate that it is sufficiently imminent to warrant deviating from our section 10 analysis regarding section 214 above. Notably, today we apply the core broadband Internet access service requirements that provide important constraints on broadband providers' conduct and protections for consumers. Thus, similar to our analysis above, it is our predictive judgment that other protections will be sufficient to ensure just, reasonable, and nondiscriminatory

conduct by providers of broadband Internet access service and to protect consumers for purposes of sections 10(a)(1) and (a)(2). Given our objective to proceed in a tailored manner, we likewise find it in the public interest to forbear from applying section 214 with respect to broadband Internet access service insofar as that provision would require Commission approval of transfers of control involving that service.

511. We also grant forbearance with respect to section 214(d), under which the Commission may require a common carrier ''to provide itself with adequate facilities for the expeditious and efficient performance of its service.'' The duty to maintain ''adequate facilities'' includes ''undertak[ing] improvements in facilities and expansion of services to meet public demand.'' In practice, we expect that the exercise of this duty here would overlap significantly with the sorts of behaviors we would expect providers to have marketplace incentives to engage in voluntarily as part of the ''virtuous cycle.'' (Thus, even if our open Internet rules do not directly address this issue, by helping promote the virtuous cycle more generally, they also will help ensure that broadband providers have marketplace incentives to behave in this manner.) Beyond that, comments contending that the Commission should not forbear as to that provision do not explain why the core broadband Internet access service requirements do not provide adequate protection at this time. Thus, as under our analysis above, it is our predictive judgment that other protections will be sufficient to ensure just, reasonable, and nondiscriminatory conduct by providers of broadband Internet access service and to protect consumers for purposes of sections 10(a)(1) and (a)(2). Likewise, informed by section 706 we have an objective of tailoring the regulatory approach here, and thus find forbearance warranted under section 10(a)(3) insofar as section 214(d) would apply by virtue of our classification of broadband Internet access service.

e. Interconnection and Market-Opening Provisions (Sections 251, 252, 256)

512. At this time, we conclude that the availability of other protections adequately address commenters' concerns about forbearance from the interconnection (Although commenters appear to use the term ''interconnection'' to mean a potentially wide range of different things, for purposes of this section we use that term solely in the manner it is used and defined for purpose of these provisions.) provisions under the section 251/252 framework (As discussed above, however, we do not forbear from applying section 251(a)(2) with respect to broadband Internet access service, and that provision thus is outside the scope of the discussion here.) and under section 256. (As a result of the forbearance granted from section 251 below, section 252 thus is inapplicable, insofar it is simply a tool for implementing the section 251 obligations. Although we do not forbear from applying section 251(a)(2) with respect to broadband Internet access service, we note that the Commission previously has held that the procedures of section 252 are not applicable in matters simply involving section 251(a). To the extent that the Commission nonetheless could be seen as newly applying section 252 with respect to broadband Internet access service as a result of our classification decision here, we find the section 10 criteria met to grant forbearance from that provision for the same reasons discussed with respect to section 251 in the text above.) We thus forbear from applying those provisions to the extent that they are triggered by the classification of broadband Internet access service in this Order. The Commission retains authority under sections 201, 202 and the open Internet rules to address interconnection issues should they arise, including through evaluating whether broadband providers' conduct is just and reasonable on a case-by-case basis. We therefore conclude that these remaining legal protections that apply with respect to providers of broadband Internet access service will enable us to act if needed to ensure that a broadband provider does not unreasonably refuse to provide service or interconnect. (Our finding of significant overlap between the authority retained by the Commission under section 201 and the interconnection requirements of section 251 is reinforced by Congress' inclusion of section 251(g) and (i), which, notwithstanding the requirements of section 251, preserve the Commission's pre-1996 Act interconnection requirements as well as its ongoing authority under section 201.) Further, we find that applying the legal structure adopted in this Order better enables us to achieve a tailored framework than requiring compliance with interconnection under section 251, in that the application of that framework leaves more to the Commission's discretion, rather than being subject to mandatory regulation under section 251. Because we retain our authority to apply and enforce these other protections, we reject commenters' suggestion that the section 10(a) forbearance criteria are not met as to sections 251 and 256. (This is particularly true as to section 256, which does not provide the Commission any additional authority that it does not otherwise have.) Rather, consistent with our analysis for other provisions, we find that other protections render application of these provisions unnecessary for purposes of sections 10(a)(1) and (a)(2) and the forbearance reflects our tailored regulatory approach, informed by section 706, and thus is in the public interest under section 10(a)(3).

513. We also reject arguments suggesting that we should not forbear from applying sections 251(b) and (c) with respect to broadband Internet access service. For example, sections 251(b)(1), (4), and (5) impose obligations on LECs regarding resale, access to rights-of-way, and reciprocal compensation. Section 251(c) subjects incumbent LECs to unbundling, resale, collocation, and other competition policy obligations. (We reject claims that section 251(c) has not been fully implemented ''[b]ecause the Commission has never applied section 251(c) to the provision of broadband Internet access service'' as at odds with that precedent. The Commission has adopted rules implementing section 251(c), and the fact that the manner in which those rules apply might vary with the classification of a particular service (or changes in that classification) does not alter that fact. Therefore, the prohibition in section 10(d) of the Act against forbearing from section 251(c) prior to such a determination is not applicable.) While we recognize the important competition policy goals that spurred Congress' adoption of these requirements in the 1996 Act, we are persuaded to forbear from applying these provisions under the circumstances here. In particular, we find the interests of customers of customers of broadband Internet access service, under section 10(a)(1) and (a)(2), and the public interest more generally, under section 10(a)(3) is best served by an overall regulatory framework that includes forbearance from these provisions, which balances the need for appropriate Commission oversight with the goal of tailoring its regulatory requirements. The Commission previously has sought to balance the advancement of competition policy with the duty to encourage advanced services deployment pursuant to section 706. Moreover, to the extent that entities otherwise are LECs or incumbent LECs, the forbearance

granted in this decision does not eliminate any previously-applicable requirements of sections 251(b) and (c) and our implementing rules. In addition, the Commission retains authority to address unjust or unreasonable conduct through its section 201 and 202 authority. Thus, we do not find the competition policy requirements of sections 251 and 259 and the implementing rules necessary within the meaning of section 10(a)(1) or (2), and conclude that forbearance would be in the public interest under section 10(a)(3). As a result, we forbear from those requirements in the context of broadband Internet access service to the extent that those provisions newly apply by virtue of our classification of that service here.

f. Subscriber Changes (Section 258)

514. We also are persuaded, under the section 10(a) framework, to forbear from applying section 258's prohibition on unauthorized carrier changes, and we reject suggestions to the contrary by some commenters. In the voice service context, that provision, and the Commission's implementing rules, provide important protections given the ability of a new provider to effectuate a carrier change not only without the consent of the customer but also without direct involvement of the customer's existing carrier. While unauthorized carrier change problems theoretically might arise even outside such a context, the record here does not reveal whether or how, in practice, unauthorized changes in broadband Internet access service providers could occur. As a result, on this record we are not persuaded what objective would be served by application of this provision at all, particularly given the protections provided by the core broadband Internet access service requirements. As under our analysis of other provisions, we conclude that application of section 258 is not necessary for purposes of sections 10(a)(1) and (a)(2) and that forbearance is in the public interest. Therefore, insofar as our classification of broadband Internet access service would newly give rise to the application of section 258, we forbear from applying section 258 to that service.

g. Other Title II Provisions

515. Beyond the provisions already addressed above, we also forbear from applying those additional Title II provisions that could give rise to new requirements by virtue of our classification of broadband Internet access service to the extent of our section 10 authority. We find it notable that no commenters raised significant concerns about forbearing from these requirements, which reinforces our analysis below.

516. For one, we conclude the three-party statutory test under section 10(a) is met to forbear from applying certain provisions concerning BOCs in sections 271 through 276 of the Act to the extent that they would impose new requirements arising from the classification of broadband Internet access service in this Order. Sections 271, 272, 274, and 275 establish requirements and safeguards regarding the provision of interLATA services, electronic publishing, and alarm monitoring services by the Bell Operating Companies (BOCs) and their affiliates. Section 273 addresses the manufacturing, provision, and procurement of telecommunications equipment and customer premises equipment (CPE) by the BOCs and their affiliates, the establishment and implementation of technical standards for telecommunications equipment and CPE, and joint network planning and design, among other matters. Section 276 addresses the provision of ''payphone service,'' and in particular establishes nondiscrimination standards applicable to BOC provision of payphone service.

517. With one exception (discussed below), we conclude that the application of any newly-triggered provisions of sections 271 through 276 to broadband Internet access service is not necessary within the meaning of section 10(a)(1) or (2), and that forbearance from these requirements is consistent with the public interest under section 10(a)(3). Many of the provisions in these sections have no current effect. Other provisions in these sections impose continuing obligations that are at most tangentially related to the provision of broadband Internet access service. Forbearance from any application of these provisions with respect to broadband Internet access service insofar as they are newly triggered by our classification of that service will not meaningfully affect the charges, practices, classifications, or regulations for or in connection with that service, consumer protection, or the public interest. (Consistent with our general approach to forbearance here, which seeks to address new requirements that could be triggered by our classification of broadband Internet access service, we do not forbear with respect to provisions to the extent that they already applied prior to this Order. For example, section 271(c) establishes substantive standards that a BOC was required to meet in order to obtain authorization to provide interLATA services in an in-region state, and which it and must continue to meet in order to retain that authorization. In addition, section 271(c)(2)(B)(iii), requires that a BOC provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way in accordance with the requirements of section 224 of the Act, does not depend upon the classification of BOCs' broadband Internet access service. In combination with section 271(d)(6), this provision provides the Commission with an additional mechanism to enforce section 224 against the BOCs. We also do not forbear from section 271(d)(6) to the extent that it provides for enforcement of the provisions we do not forbear from here. In addition, while the BOC-specific provisions of section 276 theoretically could be newly implicated insofar as the reclassification of broadband Internet access service might result in some entities newly being treated as a BOC, the bulk of section 276 appears independent of the classification of broadband Internet access service and we thus do not forbear as to those provisions.)

518. Forbearance for certain other provisions not meaningfully addressed by commenters also flows from our analysis of certain provisions that commenters did raise or that are discussed in greater detail elsewhere. First, as described elsewhere, we forbear from all *ex ante* rate regulations, tariffing and related recordkeeping and reporting requirements insofar as they would arise from our classification of broadband Internet access service. Second, we likewise forbear from unbundling and network access requirements that would newly apply based on the classification decision in this Order. It is our predictive judgment that other protections—notably the core broadband Internet access service requirements—will be adequate to ensure just, reasonable, and nondiscriminatory conduct by providers of broadband Internet access service and to protect consumers for purposes of sections 10(a)(1) and (a)(2). Further, informed by our responsibilities under section 706, we adopt an incremental regulatory approach that we find strikes the appropriate public interest balance under section 10(a)(3). For these same reasons, we forbear from section 221's property records classification and valuation provisions, which would be used in the sort of *ex ante* rate regulation that we do not find warranted for broadband Internet access service. Likewise, just as we forbear from broader unbundling obligations, that same analysis persuades us to forbear

from applying section 259's infrastructure sharing and notification requirements.

519. We also grant forbearance from other miscellaneous provisions to the extent that they would newly apply as a result of our classification insofar as they do not appear necessary or even relevant for broadband Internet access service of broadband Internet access service. For one, section 226, the Telephone Operator Consumer Services Improvement Act (''TOCSIA''), protects consumers making interstate operator services calls from pay telephones, and other public telephones, against unreasonably high rates and anti-competitive practices. Section 227(c)(3) provides for carriers to have certain notification obligations as it relates to the requirements of the Telephone Consumer Protection Act (TCPA), and section 227(e) restricts the provision of inaccurate caller identification information associated with any telecommunications service. Section 228 regulates the offering of pay-per-call services and requires carriers, inter alia, to maintain lists of information providers to whom they assign a telephone number, to provide a short description of the services the information providers offer, and a statement of the cost per minute or the total cost for each service. Section 260 regulates local exchange carrier practices with respect to the provision of telemessaging services. It is not clear how these provisions would be relevant to broadband Internet access service, and commenters to not provide meaningful arguments in that regard. Thus, for that reason, as well as the continued availability of the core broadband Internet access service requirements, we find enforcement of these provisions, to the extent they would newly apply by virtue of our classification of broadband Internet access service, is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with broadband providers are just and reasonable and are not unjustly or unreasonably discriminatory under section 10(a)(1). Enforcement also is not necessary for the protection of consumers under section 10(a)(2), and forbearance from applying these provisions is consistent with the public interest under section 10(a)(3), particularly given our conclusion, informed by section 706, that it is appropriate to proceed incrementally here.

520. We also note that the provisions of section 276 underlying the Commission's regulation of inmate calling services (ICS) and the ICS rules themselves do not appear to vary depending on whether broadband Internet access service is an ''information service'' or ''telecommunications service.'' We note, however, that The DC Prisoners' Legal Services Project, Inc., *et al.* (the ICS Petitioners) express concern that forbearance under this order could be misconstrued as a limitation on the Commission's authority with respect to any advanced ICS services (such as video visitation) that may replace or supplement traditional ICS telephone calls. It is not our intent to limit in any way the Commission's ability to address ICS, particularly given the Commission's finding in 2013 that the ICS market ''is failing to protect the inmates and families who pay [ICS] charges.'' We therefore find that forbearance would fail to meet the statutory test of section 10 of the Act, in that the protections of section 276 remain necessary to protect consumers and serve the public interest. Accordingly, out of an abundance of caution we make clear that we are not forbearing from applying section 276 to the extent applicable to ICS, as well as the ICS rules.

h. Truth-in-Billing Rules

521. We also find the section 10(a) criteria met and forbear from applying our truth-in-billing rules insofar as they are triggered by our classification of broadband Internet access service here. The core broadband Internet access requirements, including the requirement of just and reasonable conduct under section 201(b), will provide important protections in this context even without specific rules. Moreover, even advocates of such protections observe that this ''may require further examination by the Commission,'' and do not actually propose that the current truth-in-billing rules immediately apply in practice, instead recommending that the Commission ''temporarily stay these rules [and] implement interim provisions.'' They do not explain what such interim provisions should be, however, and as we explain below we are not persuaded that a stay or time-limited forbearance provides advantages relative to the approach we adopt here. Consequently, as in our analysis above, we are not persuaded that our truth-in-billing rules are necessary for purposes of sections 10(a)(1) and (a)(2), particularly given the availability of the core broadband Internet access service requirements. Likewise, as above, under the tailored regulatory approach we find warranted here, informed by our responsibilities under section 706, we conclude that forbearance is in the public interest under section 10(a)(3).

i. Roaming-Related Provisions and Regulations

522. We find section 10(a) met for purposes of granting certain conditional forbearance from roaming regulations. We recognize that the reclassification decisions elsewhere in this Order potentially alter the scope of an MBIAS provider's roaming obligations. The Commission has previously established two different regimes to govern the roaming obligations of commercial mobile providers. The first regime, established in 2007 pursuant to authority under sections 201 and 202 of the Act, imposes obligations to provide automatic roaming on CMRS carriers that ''offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility.'' Such carriers were required, on reasonable request, to provide automatic roaming on reasonable and not unreasonably discriminatory terms and conditions.

523. Because this regime did not extend to data services that were not at that time classified as CMRS, the Commission adopted another roaming regime in 2011 under its Title III authority, applicable to ''commercial mobile data services,'' which were defined to include all those commercial mobile services that are not interconnected with the public switched network, including (under the definition of ''public switched network'' applicable at that time) MBIAS. Under this data roaming provision, covered service providers were required to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain specified limits.

524. Our determination herein to reclassify MBIAS as CMRS potentially affects the roaming obligations of MBIAS providers in two ways. First, absent any action by the Commission to preserve data roaming obligations, the determination that MBIAS is an interconnected service would result in providers of MBIAS no longer being subject to the data roaming rule, which as noted above, applies only to non-interconnected services. Second, the determination that MBIAS is CMRS potentially subjects MBIAS providers to the terms of the CMRS roaming rules.

525. We decide to retain for MBIAS, at this time, the roaming obligations that applied prior to reclassification of that service, consistent with our intent to proceed incrementally with regard to regulatory changes for MBIAS, and in

the absence of significant comment in the instant record regarding the specific roaming requirements that should apply to MBIAS after reclassification. We therefore forbear from the application of the CMRS roaming rule, section 20.12(d), to MBIAS providers, conditioned on such providers continuing to be subject to the obligations, process, and remedies under the data roaming rule codified in section 20.12(e). That condition, coupled with the core broadband Internet access service requirements that remain, persuade us that the forborne-from rules are not necessary at this time for purposes of sections 10(a)(1) and (a)(2) and that such conditional forbearance is in the public interest under section 10(a)(3). We commit, however, to commence in the near term a separate proceeding to revisit the data roaming obligations of MBIAS providers in light of our reclassification decisions today. Such a proceeding will permit us to make an informed decision, based on a complete and focused record, on the proper scope of MBIAS providers' roaming obligations after reclassification. Pending the outcome of that reexamination, MBIAS providers covered by our conditional forbearance continue to be subject to the obligations under the data roaming rule, and we will take any action necessary to enforce those obligations. To ensure, however, that providers have certainty regarding their roaming obligations pending the outcome of the roaming proceeding, we further provide that determinations adopted in that proceeding will apply only prospectively, *i.e.* only to conduct occurring after the effective date of any rule changes. The data roaming rule, rather than the automatic roaming rule or Title II, will govern conduct prior to any such changes.

j. Terminal Equipment Rules

526. We also determine under section 10(a) to forbear from applying certain terminal equipment rules to the extent that they would newly apply by virtue of the classification of broadband Internet access service. (While Full Service Network/TruConnect refer generally to our ''Part 68'' rules, that Part also includes our hearing aid compatibility rules, and as described above, the Commission's existing hearing aid compatibility rules do not immediately impose new hearing aid compatibility requirements on mobile wireless broadband providers by virtue of the classification decisions in this Order, and we do not forbear from applying those rules or section 710 of the Act. Section 710 of the Act and our hearing aid compatibility rules thus are not encompassed by the discussion here.) Notably, our open Internet rules themselves prevent broadband Internet access service providers from restricting the use of non-harmful devices, subject to reasonable network management. (Insofar as any Part 68 rules subject to forbearance here also permitted carriers to take steps to protect their networks, we expect that such steps also would constitute reasonable network management under our open Internet rules.) Consequently, as in our analysis above, we are not persuaded that the application of terminal equipment rules, insofar as they would newly apply to broadband Internet access service providers by virtue of our classification decision here, are necessary for purposes of sections 10(a)(1) and (a)(2), particularly given the availability of the core broadband Internet access service requirements, and in particular our bright-line rules. Likewise, as above, under the tailored regulatory approach we find warranted here, informed by our responsibilities under section 706, we conclude that forbearance is in the public interest under section 10(a)(3).

3. Other Provisions and Regulations

527. Having discussed in detail here and above the analyses that persuade us to grant broad forbearance from Title II provisions to the extent of our section 10 authority, we conclude that the same analysis justifies forbearance from other provisions and regulations insofar as they would be triggered by the classification of broadband Internet access service in this Order. In particular, beyond the Title II provisions and certain implementing rules discussed above, the classification of broadband Internet access service could give rise to obligations related to broadband providers' provision of that service under Title III, Title VI and Commission rules.

- First, certain provisions of Titles III and VI and Commission rules (For clarity, we note that by ''rules'' we mean both codified and uncodified rules. In addition, by ''associated'' Commission rules, we mean rules implementing requirements or substantive Commission jurisdiction under provisions in Title II, III, and/or VI of the Act from which we forbear.) associated with those Titles or the provisions of Title II from which we forbear may apply by their terms to *providers* classified in particular ways. (The Order's classification of broadband Internet access service could trigger requirements that apply by their terms to ''common carriers,'' ''telecommunications carriers,'' ''providers'' of common carrier or telecommunications services, or ''providers'' of CMRS or commercial mobile services. Similarly, other provisions of the Act and Commission rules may impose requirements on entities predicated on the entities' classification as a ''common carrier,'' ''telecommunications carrier,'' ''provider'' of common carrier or telecommunications service, or ''provider'' of CMRS or commercial mobile service without being framed in those terms.) As to this first category of requirements, and except as to the core broadband Internet access service requirements, we forbear from any such provisions and regulations to the full extent of our authority under section 10, but only insofar as a broadband provider falls within those categories or provider classifications by virtue of its provision of broadband Internet access service, but not insofar as those entities fall within those categories of classifications by virtue of other services they provide.
- Second, certain provisions of Titles III and VI and Commission rules associated with those Titles or the provisions of Title II from which we forbear may apply by their terms to *services* classified in particular ways. (The classification of broadband Internet access service as a telecommunications service and, in the mobile context, also CMRS service under the Communications Act, thus could trigger any requirements that apply by their terms to ''common carrier services,'' ''telecommunications services,'' or ''CMRS'' or ''commercial mobile'' services. Similarly, other provisions of the Act and Commission rules may impose requirements on services predicated on a service's classification as a ''common carrier service,'' ''telecommunications service,'' ''CMRS'' or ''commercial mobile'' service without being framed in those terms.) Regarding this second category of requirements (to the extent not already covered by the first category, above), and except as to the core broadband Internet access service requirements, we forbear from any such provisions and regulations to the full extent of our authority under section 10 specifically with respect to broadband Internet access service, but do not forbear from these requirements as to any other services (if any) that broadband providers offer that are subject to these requirements.
- Third, while commenters do not appear to have identified such rules, there potentially could be other Commission rules for which our underlying authority derives from provisions of the Act all of which we forbear from under the first two categories of requirements identified

above, or under our Title II forbearance discussed above, but which are not already subject to that identified scope of forbearance. To the extent not already identified in the first two categories of requirements above, and except as to the core broadband Internet access service requirements, we forbear to the full extent of our authority under section 10 from rules based entirely on our authority under provisions we forbear from under the first and second categories above (or for which the forborne-from provisions provide essential authority) insofar as the rules newly apply as a result of the classification of broadband Internet access service.

• Fourth, we include within the scope of our broad forbearance for broadband Internet access service any pre-existing rules with the primary focus of implementing the requirements and substantive Commission jurisdiction in sections 201 and/or 202, including forbearing from pre-existing pricing, accounting, billing and recordkeeping rules. (This forbearance would not include rules implementing our substantive jurisdiction under provisions of the Act from which we do not forbear that merely cite or rely on sections 201 or 202 in some incidental way, such as by, for example, relying on the rulemaking authority provided in section 201(b). Consistent with our discussions above, this category also does not include our open Internet rules.) As with the rules identified under the first and second categories above, we do not forbear insofar as a provider is subject to these rules by virtue of some other service it provides.

• Fifth, the classification of broadband Internet access service as a telecommunications service could trigger certain contributions to support mechanisms or fee payment requirements under the Act and Commission rules, including some beyond those encompassed by the categories above. Insofar as any provisions or regulations not already covered above would immediately require the payment of contributions or fees by virtue of the classification of broadband Internet access service (rather than merely providing Commission authority to assess such contributions or fees) they are included within the scope of our forbearance. As under the first and second categories above, we do not forbear insofar as a provider is subject to these contribution or fee payments by virtue of some other service it provides.

Just as we found in our analysis of Title II provisions, it is our predictive judgment that other protections—notably the core broadband Internet access service requirements—will be adequate to ensure just, reasonable, and nondiscriminatory conduct by providers of broadband Internet access service and to protect consumers for purposes of sections 10(a)(1) and (a)(2). Further, informed by our responsibilities under section 706, we adopt an incremental regulatory approach that we find strikes the appropriate public interest balance under section 10(a)(3). These collectively persuade us that forbearance for the additional categories of provisions and regulations above is justified to the extent of our section 10 authority.

528. We further make clear that our approach to forbearance in this Order, which excludes certain categories of provisions and regulations, effectively addresses the concerns of a number of commenters regarding the scope of our forbearance. First, we forbear here only to the extent of our authority under section 10 of the Act. Section 10 provides that ''the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services'' if certain conditions are met. Certain provisions or regulations do not fall within the categories of provisions of the Act or Commission regulations encompassed by that language because they are not applied to telecommunications carriers or telecommunications services, and we consequently do not forbear as to those provisions or regulations.

529. Second, we do not forbear from provisions or regulations that are not newly triggered by the classification of broadband Internet access service. The *2014 Open Internet NPRM* sought comment on possible forbearance premised on addressing the consequences that flowed from any classification decisions it might adopt. Although some commenters include sweeping requests that we forbear from all of Title II or the like, in practice, they, too, appear focused on the consequences of classification decisions. Nor do we find on the record here that the section 10 criteria met with respect to such forbearance, and in particular do not find it in the public interest, in the context of this item, to forbear with respect to requirements that already applied to broadband Internet access service and providers of that service prior to this Order. Rather, broadband providers remain free to seek relief from such provisions or regulations through appropriate filings with the Commissions.

530. A number of commenters' arguments are addressed on one or more of these grounds. (In addition to those discussed below, these considerations explain, for example, why we do not grant forbearance with respect to sections 303(b), 303(r) and 316, upon which we rely for authority for our open Internet rules.) For example, as to the first set of exclusions, we note that section 257 imposes certain obligations on the Commission without creating enforceable obligations that the Commission would apply to telecommunications carriers or telecommunications services, so we do not forbear from applying those provisions. For the same reasons, we do not forbear with respect to provisions insofar as they merely reserve state authority.

531. We further note, for example, that the immunity from liability in section 230(c) applies to providers or users of an ''interactive computer service,'' and its application does not vary based on the classification of broadband Internet access service here. Consequently, it is not covered by the scope of forbearance in this order. We also note that the restrictions on obscene and illicit content in sections 223 and 231(to the extent enforced)—as well as the associated limitations on liability—in many cases, do not vary with the classification decisions in this Order, and thus likewise are not encompassed by the forbearance in this Order. (As a narrow exception to this general conclusion, section 223(c)(1) conceivably could be newly applied to broadband providers by virtue of the classification decisions in this Order. No commenter meaningfully argues that the Commission should apply this provision to broadband providers, and that fact, coupled with the other protections that remain, persuade us that, insofar as the Commission would apply this provision, such application is not necessary for purposes of sections 10(a)(1) and (a)(2). Likewise, consistent with the tailored regulatory approach adopted in this Order, we find it in the public interest under section 10(a)(3) to forbear insofar as the Commission otherwise would newly apply that provision to a broadband provider as a result of this Order.) To the extent that certain of these provisions would benefit broadband providers and could instead be viewed as provisions that are newly applied to broadband providers by virtue of the classification decisions in this Order, it would better promote broadband deployment, and thus better serve the public interest, if we continue to apply those provisions. We thus find

that such forbearance would not be in the public interest under section 10(a)(3).

532. Some commenters also advocate that the Commission not forbear from applying ''the provisions of the Communications Assistan[ce] for Law Enforcement Act under section 229.'' Section 229(a)–(d) direct the Commission to adopt rules implementing the requirements of CALEA and authorize the Commission to investigate and enforce those rules. Section 229(e) enables providers to recover certain costs of CALEA compliance. Section 229 is not, by its terms, limited to ''telecommunications services'' as defined by the Communication Act, and CALEA obligations already apply to broadband Internet access service. Thus, in carrying out section 229, the Commission's role already extended to broadband Internet service, and all telecommunications carriers subject to CALEA are already required to comply with all Commission rules adopted pursuant to section 229. Declining to forbear from applying section 229 and our associated rules is consistent with the overall approach, discussed above, of focusing on addressing newly-arising requirements flowing from our classification decision, and thus is in the public interest. Given that CALEA's statutory obligations will apply regardless of any forbearance granted by the Commission under the Communications Act, and given the lack of any substantial argument in the record in favor of forbearance from section 229, we conclude that maintaining the Commission's existing rulemaking and oversight role as established by section 229 better advances the public interest. As services and technologies evolve over time, CALEA implementation will need to evolve as well. Section 229 establishes a rulemaking and oversight role for the Commission that helps enable those future changes. If we were to forbear from section 229 (assuming *arguendo* that we could find the forbearance standard to be satisfied), we thus would frustrate the ability of CALEA implementation to evolve with technology, an outcome that we find fundamentally inconsistent with the continued applicability of CALEA itself and therefore with the public interest.

533. We also do not forbear from certain rules governing the wireless licensing process. First, our rules require applicants for licenses under our flexible use rules to designate the regulatory status of proposed services (*i.e.,* common carrier, non-common carrier, or both) in the initial license application, and make subsequent amendment to the designation, as necessary. With regard to these rules, we find that forbearance of the regulatory status designation would result in inaccurate license information and therefore is not warranted. In particular, we conclude that such forbearance would be contrary to the public interest under section 10(a)(3).

534. Second, sections 1.933 and 1.939 of our rules, 47 CFR 1.933, 1.939, implementing sections 309(b) and (d)(1) of the Act, 47 U.S.C. 309(b), (d)(1), set out processes for license applications for authorization, major modification, major amendment, substantial assignment, or transfer. Applications that involve, in whole or in part, licenses to be used for ''Wireless Telecommunications Services,'' as defined in section 1.907 of our rules, are subject to a public notice process providing opportunity for petitions to deny, but applications that involve only ''Private Wireless Services,'' as defined in section 1.907 of our rules are not subject to that process.

535. With regard to these rules, we find that reclassification is unlikely to trigger a different process under these rules, for two reasons. We note that mobile BIAS today is being provided using licenses that are governed under our flexible use rules (*i.e.,* under parts 20, 22, 24, 26, and 27) and that are being used as well to provide services, such as mobile voice, already provided as CMRS. Thus, these applications have been subject to these provisions because they have also been used to provide CMRS services. To the extent applicants seek licenses for reclassified service under other parts, such as Part 101, or are otherwise not covered by the above reasoning, we find that forbearance from these procedures is not warranted, as the public notice process requirements are important to ensure that common carrier licensing serves the public interest. Accordingly, we do not find forbearance from applying these rules in the public interest under section 10(a)(3), and thus we do not forbear from application of section 309(b) and (d)(1) of the Act, or from rules 1.931, 1.933, 1.939, 22.1110, and 27.10.

*D. Potential Objections to Our General Approach to Forbearance for Broadband Internet Access Service*

536. While we address above specific arguments against forbearance as to particular provisions or requirements, we note that we also reject certain overarching concerns about our forbearance decision here. For one, we grant substantial forbearance in this item, rather than deferring such forbearance decisions to future proceedings. We are able to conclude on this record that the section 10(a) criteria are met with respect to the forbearance we grant, and taking such action here enables us to strike the right regulatory and deregulatory balance regarding broadband Internet access service, as discussed above. Under these circumstances we reject arguments that we should defer forbearance to future proceedings. Likewise, given our finding that the section 10(a) criteria are met for the forbearance adopted here, we reject generalized arguments that the scope of forbearance here should be the same as that historically granted in the CMRS context. We conclude that such overarching claims do not address distinguishing factors here, including our decision that it is in the public interest to proceed incrementally given the regulatory experience of the near-term past coupled with the Commission's responsibilities under section 706 of the 1996 Act, as discussed above. Further, because we grant substantial forbearance in this Order rather than deferring those issues to a future proceeding, we also reject concerns that the process of obtaining forbearance will be burdensome or uncertain, insofar as they are based on a presumption that such relief only would be granted via subsequent proceedings. (The posture here is distinguishable from the circumstances underlying the *Brand X* case, where a court had classified cable modem service as a telecommunications service without simultaneous forbearance of the sort we adopt here, and thus we reject arguments seeking to rely on court filings there.)

537. Nor are we persuaded by arguments that the adoption of interim rules or the stay of all but certain rules should be used in lieu of forbearance, since those arguments do not explain in meaningful detail what specific interim rules would be adopted or the scope of what rules would be excluded from any stay, nor how, absent forbearance, interim rules or a stay by the Commission could address requirements imposed by the Act, rather than merely by Commission regulation. To the extent that commenters' arguments instead advocate that forbearance should be interim or time-limited, under today's approach, we retain adequate authority to modify our regulatory approach in the future, should circumstances warrant. We thus are not persuaded that there is any material, incremental advantage or benefit to adopting forbearance on an interim or time-limited basis.

538. We also reject claims that the Commission cannot grant forbearance here because it did not provide adequate notice and an opportunity for comment. We need not and do not address here whether forbearance is, in all cases, informal rulemaking, because in this instance we have, in fact, proceeded via rulemaking and provided sufficient notice and an opportunity to comment in that regard. section 553(b) and (c) of the APA requires agencies to give public notice of a proposed rulemaking that includes ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' and to give interested parties an opportunity to submit comments on the proposal. The notice ''need not specify every precise proposal which [the agency] may ultimately adopt as a rule''; it need only ''be sufficient to fairly apprise interested parties of the issues involved.'' Moreover, the APA's notice requirements are satisfied where the final rule is a ''logical outgrowth'' of the actions proposed. As long as parties should have anticipated that the rule ultimately adopted was possible, it is considered a ''logical outgrowth'' of the original proposal, and there is no violation of the APA's notice requirements.

539. Those notice standards are satisfied with respect to the forbearance adopted here. The *2014 Open Internet NPRM* observed:

> If the Commission were to reclassify broadband Internet access service as described above or classify a separate broadband service provided to edge providers as a ''telecommunications service,'' such a service would then be subject to all of the requirements of the Act and Commission rules that would flow from the classification of a service as a telecommunications service or a common carrier service.

Citing section 10 of the Act, the Commission then sought comment ''on the extent to which forbearance from certain provisions of the Act or our rules would be justified'' should the Commission adopt such an approach ''in order to strike the right balance between minimizing the regulatory burden on providers and ensuring that the public interest is served.'' (The Commission further sought comment on ''which provisions should be exempt from forbearance and which should receive it'' based on whether such action would ''protect and promote Internet openness.'' *Id.* at 5616, para. 154. These are the factors that the Commission did, in fact, use in evaluating the section 10(a) criteria and deciding whether and how much forbearance to grant here.) ''For mobile broadband services,'' the Commission also sought ''comment on the extent to which forbearance should apply, if the Commission were to classify mobile broadband Internet access service as a CMRS service subject to Title II.'' Collectively, the Commission thus provided notice of possible forbearance as to any provision of the Act or Commission rules triggered by the classification of broadband Internet access service of the sort we adopt in this Order. (Within that scope, the Commission also sought more detailed comment on specific aspects of the possible forbearance it might adopt, discussing similar questions raised in the *2010 Broadband Classification NOI,* particular statutory provisions from which the Commission might not forbear, and particular approaches the Commission might use to evaluating forbearance. Moreover, as discussed in the preceding sections above, the *2014 Open Internet NPRM* yielded a robust record regarding forbearance.) The forbearance we grant here from applying certain provisions and regulations newly triggered by our classification decisions in order to strike the right regulatory balance for broadband Internet access services consistent with the objective of preserving and protecting Internet openness is squarely within that scope of notice provided by the *2014 Open Internet NPRM.*

540. We also view as misguided complaints about the potential for our forbearance decisions to be challenged in court or reversed in the future by the Commission. Having concluded that broadband Internet access service is a telecommunications service, certain legal consequences under the Act flow from that by default. We grant in this order the substantial forbearance from those provision and other Commission regulations to the extent that we find warranted at this time under the section 10 framework. We thereby provide broadband providers significant regulatory certainty. (Perfect regulatory certainty would not be feasible under any classification. For example, even just as to rules adopted under section 706 of the 1996 Act parties theoretically could raise judicial challenges as to the adequacy of the Commission's rules in meeting the objectives of section 706 and a future Commission likewise might elect to modify those rules.) We thus are not persuaded to alter our approach to forbearance based on these arguments.

541. We recognize that in our approach to forbearance for broadband Internet access service above, we are not first exhaustively determining provision-by-provision and regulation-by-regulation whether and how particular provisions and rules apply to this service. The Commission has broad discretion whether to issue a declaratory ruling, which is what would be entailed by such an undertaking. We exercise our discretion not to do so here, except to the limited extent necessary to address arguments in the record regarding specific requirements. For one, the Commission need not resolve whether or how a provision or regulation applies before evaluating the section 10(a) criteria—rather, it can conduct that evaluation and, if warranted, grant forbearance within the scope of its section 10 authority assuming *arguendo* that the provisions or regulations apply. In addition, as discussed in greater detail above, the Commission is proceeding incrementally here. As the D.C. Circuit has recognized, within the statutory framework that Congress established, the Commission ''possesses significant, albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband.'' Thus, to achieve the balance of regulatory and deregulatory policies adopted here for broadband Internet access service, we need not—and thus do not—first resolve potentially complex and/or disputed interpretations and applications of the Act and Commission rules that could create precedent with unanticipated consequences for other services beyond the scope of this proceeding, and which would not alter the ultimate regulatory outcome in this Order in any event.

## VI. Constitutional Considerations

542. The actions we take today are fully consistent with the Constitution. Some commenters contend that the open Internet rules burden broadband providers' First Amendment rights and effect uncompensated takings of private property under the Fifth Amendment. We examine these arguments below and find them unfounded.

### *A. First Amendment*

#### 1. Free Speech Rights

543. The rules we adopt today do not curtail broadband providers' free speech rights. When engaged in broadband Internet access services, broadband providers are not speakers, but rather serve as conduits for the speech of others. The manner in which broadband providers operate their networks does not rise to the level of speech protected by the First Amendment. As telecommunications services, broadband Internet access services, by definition, involve transmission of network users' speech without change in form or content, so open Internet

rules do not implicate providers' free speech rights. And even if broadband providers were considered speakers with respect to these services, the rules we adopt today are tailored to an important government interest—protecting and promoting the open Internet and the virtuous cycle of broadband deployment—so as to ensure they would survive intermediate scrutiny.

544. This is not to say that we are indifferent to matters of free speech on the Internet. To the contrary, our rules serve First Amendment interests of the highest order, promoting ''the widest possible dissemination of information from diverse and antagonistic sources'' and ''assuring that the public has access to a multiplicity of information sources'' by preserving an open Internet. We merely acknowledge that the free speech interests we advance today do not inhere in broadband providers with respect to their provision of broadband Internet access services.

545. Some commenters contend that because broadband providers distribute their own and third-party content to customers, rules that govern the transmission of Internet content over broadband networks violate their free speech rights. CenturyLink and others compare the operation of broadband Internet access service to ''requiring a cable operator to carry all broadcast stations,'' and contend that the rules adopted today ''displace access service providers' editorial control over their networks'' which would otherwise constitute protected speech under the First Amendment. Other commenters respond that broadband providers are not engaged in speech when providing broadband Internet access services, so they are not entitled to First Amendment protections in their operation of these services. Consistent with our determination in the *2010 Open Internet Order,* we find that when broadband providers offer broadband Internet access services, they act as conduits for the speech of others, not as speakers themselves.

546. Claiming free speech protections under the First Amendment necessarily involves demonstrating status as a speaker—absent speech, such rights do not attach. In determining the limits of the First Amendment's protections for courses of conduct, the Supreme Court has ''extended First Amendment protections only to conduct that is inherently expressive.'' To determine whether an actor's conduct possesses ''sufficient communicative elements to bring the First Amendment into play,'' the Supreme Court has asked whether ''[a]n intent to convey a particularized message was present and [whether] the likelihood was great that the message would be understood by those who viewed it.''

547. Broadband providers' conduct with respect to broadband Internet access services does not satisfy this test, and analogies to other forms of media are unavailing. CenturyLink and others compare their provision of broadband service to the operation of a cable television system, and point out that the Supreme Court has determined that cable programmers and cable operators engage in editorial discretion protected by the First Amendment. As a factual matter, broadband Internet access services are nothing like the cable service at issue in *Turner I.* In finding that cable programmers and cable operators are entitled to First Amendment protection, the *Turner I* court began with the uncontested assertion that ''cable programmers and operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment.'' The court went on to explain that ''cable programmers and operators 'see[k] to communicate messages on a wide variety of topics and in a wide variety of formats' '' through ''original programming or by exercising editorial discretion over which stations or programs to include in its repertoire.'' (Likewise, while a newspaper publisher chooses which material to publish, broadband providers facilitate access to all or substantially all Internet endpoints. *See Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241, 257 (1974). In contrast, broadband Internet access services more closely resemble the ''conduit for news, comment, and advertising'' from which the Court distinguishes newspaper publishing.) Cable operators thus engage in protected speech when they both *engage in* and *transmit* speech with the intent to convey a message either through their own programming directly or through contracting with other programmers for placement in a cable package.

548. Broadband providers, however, display no such intent to convey a message in their provision of broadband Internet access services—they do not engage in speech themselves but serve as a conduit for the speech of others. The record reflects that broadband providers exercise little control over the content which users access on the Internet. Broadband providers represent that their services allow Internet end users to access all or substantially all content on the Internet, without alteration, blocking, or editorial intervention. End users, in turn, expect that they can obtain access to all content available on the Internet, without the editorial intervention of their broadband provider. While these characteristics certainly involve transmission of others' speech, the accessed speech is not edited or controlled by the broadband provider but is directed by the end user. (To be sure, broadband providers engage in some reasonable network management designed to protect their networks from malicious content and to relieve congestion, but these practices bear little resemblance to the editorial discretion exercised by cable operators in choosing programming for their systems.) In providing these services, then, broadband providers serve as mere conduits for the messages of others, not as agents exercising editorial discretion subject to First Amendment protections.

549. Moreover, broadband is not subject to the same limited carriage decisions that characterize cable systems—the Internet was designed as a decentralized ''network of networks'' which is capable of delivering an unlimited variety of content, as chosen by the end user. In contrast, the *Turner I* court emphasized that the rules under consideration in that case regulated cable speech by ''reduc[ing] the number of channels over which cable operators exercise unfettered control'' and ''render[ing] it more difficult for cable programmers to compete for carriage on the limited channels remaining.'' Neither of these deprivations of editorial discretion translates to the Internet as a content platform. The arrival of one speaker to the network does not reduce access to competing speakers; nor are broadband providers limited by our rules in the direct exercise of their free speech rights. Lacking the exercise of editorial control and an intent to convey a particularized message, we find that our rules regulate the unexpressive transmission of others' speech over broadband Internet access services, not the speech of broadband providers. As our rules merely affect what broadband providers ''must *do* . . . not what they may or may not *say,''* the provision of broadband Internet access services falls outside the protections of the First Amendment outlined by the court in *Turner I.* (We further conclude that broadband providers' conduct is not sufficiently expressive to warrant First Amendment protection, as the provision of broadband Internet access services is not ''inherently expressive,'' but would require significant explanatory speech to acquire any characteristics of speech.)

550. Our conclusion that broadband Internet access service providers act as conduits rather than speakers holds true regardless of how they are classified

under the Act. But we think this is particularly evident given our classification of broadband Internet access services as telecommunications services subject to Title II. The Act defines ''telecommunications'' as the ''transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' The Act also provides for common carrier treatment of any provider to the extent it is engaged in providing telecommunications services. In the communications context, common carriage requires that end users ''communicate or transmit intelligence of their own design and choosing.'' In section IV, we have found that broadband Internet access services fall within the definitions of ''telecommunications'' and ''telecommunications services'' subject to Title II common carrier regulation. By definition, then, the provision of telecommunications service does not involve the exercise of editorial control or judgment. (We also note that the requirement under *Computer II* that facilities-based providers of ''enhanced services'' separate out and offer on a common carrier basis the ''basic service'' transmission component underlying their enhanced services, a requirement reflected in the 1996 Act's distinction between ''telecommunications services'' and ''information services'' was never held to raise First Amendment concerns. The Supreme Court has acknowledged the distinction between common carriers and entities with robust First Amendment rights in numerous contexts.)

551. We also take note that, in other contexts, broadband providers have claimed immunity from copyright violations and other liability for material distributed on their networks because they lack control over what end users transmit and receive. Broadband providers are not subject to subpoena in a copyright infringement case because as a provider it ''act[s] as a mere conduit for the transmission of information sent by others.'' Acknowledging the unexpressive nature of their transmission function, Congress has also exempted broadband providers from defamation liability arising from content provided by other information content providers on the Internet. Given the technical characteristics of broadband as a medium and the representations of broadband providers with respect to their services, we find it implausible that broadband providers could be understood to being conveying a particularized message in the provision of broadband Internet access service.

552. Even if open Internet rules were construed to implicate broadband providers' rights as speakers, our rules would not violate the First Amendment because they would be considered content-neutral regulations which easily satisfy intermediate scrutiny. In determining whether a regulation is content-based or content-neutral, the ''principal inquiry . . . is whether the government adopted a regulation of speech because of [agreement or] disagreement with the message it conveys.'' The open Internet rules adopted today apply independent of content or viewpoint. Instead, they are triggered by a broadband provider offering broadband Internet access services. The rules are structured to operate in such a way that no speaker's message is either favored or disfavored, *i.e.* content neutral.

553. A content-neutral regulation will survive intermediate scrutiny if ''it furthers an important or substantial government interest . . . unrelated to the suppression of free expression,'' and if ''the means chosen'' to achieve that interest ''do not burden substantially more speech than is necessary.'' The government interests underlying this Order are clear and numerous. Congress has expressly tasked the Commission with ''encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,'' and has elsewhere explained that it is the policy of the United States to ''promote the continued development of the Internet and other interactive computer services and other interactive media.'' Additionally, the *Verizon* court accepted the Commission's finding that ''Internet openness fosters the edge-provider innovation that drives [the] 'virtuous cycle.' '' As discussed above, this Order pursues these government interests by preserving an open Internet to encourage competition and remove impediments to infrastructure investment, while enabling consumer choice, end-user control, free expression, and the freedom to innovate without permission.

554. Indeed, rather than burdening free speech, the rules we adopt today ensure that the Internet promotes speech by ensuring a level playing field for a wide variety of speakers who might otherwise be disadvantaged. As *Turner I* affirmed ''assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.'' (The *Turner I* Court continued: ''Indeed, it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'') Based on clear legislative interest in furthering broadband deployment and the paramount government interest in assuring that the public has access to a multiplicity of information sources, these interests clearly qualify as substantial under intermediate scrutiny.

555. Additionally, the rules here are sufficiently tailored to accomplish these government interests. The effect on speech imposed by these rules is minimal. The rules do not ''burden substantially more speech than necessary'' because they do not burden any identifiable speech—the rules we adopt today apply only to broadband providers' conduct with regard to their broadband Internet access services. Providers remain free to engage in the full panoply of protected speech afforded to any other speaker. They are free to offer ''edited'' services and engage in expressive conduct through the provision of other data services, as well.

556. Verizon also contends that the open Internet rules are impermissible under *Citizens United* because they result in differential treatment of providers of broadband service and other connected IP services. Our rules governing the practices of broadband providers differ markedly from the statutory restrictions on political speech at issue in *Citizens United.* Our rules do not impact core political speech, where the ''First Amendment has its fullest and most urgent application.'' By contrast, the open Internet rules apply only to the provision of broadband services in a commercial context, so reliance on the strict scrutiny standards applied in *Citizens United* is inapt. As described above, intermediate scrutiny under *Turner I* would be the controlling standard of review if broadband providers were found to be speakers. If a court were to find differential treatment under our rules, though, they would be justified under *Turner I* because speaker-based distinctions can be deemed permissible so long as they are '' 'justified by some special characteristic of' the particular medium being regulated.' '' The ability and incentive of broadband providers to impose artificial scarcity and pick winners and losers in the provision of their last-mile broadband services is just such a special characteristic justifying differential treatment.

557. In sum, the rules we adopt today do not unconstitutionally burden any of

the First Amendment rights held by broadband providers. Broadband providers are conduits, not speakers, with respect to broadband Internet access services. Even if they were engaged in speech with respect to these services, the rules we adopt today are tailored to the important government interest in maintaining an open Internet as a platform for expression, among other things.

2. Compelled Disclosure

558. The disclosure requirements adopted as a part of our transparency rule also fall well within the confines of the First Amendment. As explained above, these required disclosures serve important government purposes, ensuring that end users and edge providers have accurate and accessible information about broadband providers' services. This information is central both to preventing consumer deception and to the operation of the virtuous cycle of innovation, consumer demand, and broadband deployment.

559. CenturyLink contends that the disclosure requirements under the transparency rule violate the First Amendment by compelling speech without a reasonable basis. They argue that the Commission has not established a potential problem which these disclosures are necessary to remedy and that this is fatal to the rules under the First Amendment. This argument misapprehends both the factual justification for the transparency rules and the constitutional legal standard against which any disclosure requirements would be evaluated by the courts.

560. The Supreme Court has made plain in *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio* that the government has broad discretion in requiring the disclosure of information to prevent consumer deception and ensure complete information in the marketplace. Under *Zauderer's* rational basis test, mandatory factual disclosures will be sustained ''as long as disclosure requirements are reasonably related to the State's interest in preventing deception to consumers.'' As the Court observed, ''the First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed;'' the speaker's interest is ''minimal.'' The D.C. Circuit recently reaffirmed these principles in *American Meat Institute* v. *United States Department of Agriculture,* an *en banc* decision in which the Court joined the First and Second Circuit Courts of Appeals in recognizing that other government interests beyond preventing consumer deception may be invoked to sustain a disclosure mandate under *Zauderer.*

561. The transparency rule clearly passes muster under these precedents. Preventing consumer deception in the broadband Internet access services market lies at the heart of the transparency rule we adopt today. The Commission has found that broadband providers have the incentive and ability to engage in harmful practices, as discussed above in section III.B.2. In the *2010 Open Internet Order,* we found that ''disclosure ensures that end users can make informed choices regarding the purchase and use of broadband service.'' Since the original transparency rule was promulgated, the Commission has received hundreds of complaints regarding advertised rates, slow or congested services, data caps, and other potentially deceptive practices. Similarly, the enhancements to the transparency rule which we adopt today are designed to prevent confusion to all consumers of the broadband providers' services—end-users and edge providers alike. Tailored disclosures promise to provide a metric against which these customers can judge whether their broadband connections satisfy the speeds, bandwidth, and other terms advertised by broadband providers.

562. Further buttressing these disclosure requirements are numerous other government interests permitted under *American Meat Institute.* As acknowledged by the D.C. Circuit in *Verizon,* broadband providers have both the economic incentive and the technical ability to interfere with third-party edge providers' services by imposing discriminatory restrictions on access and priority. The disclosures we require under today's transparency rule serve to curb those incentives by shedding light on the business practices of broadband providers. Accurate information about broadband provider practices encourages the competition, innovation, and high-quality services that drive consumer demand and broadband investment and deployment. Tailored disclosures further amplify these positive effects by ensuring that edge providers have critical network information necessary to develop innovative new applications and services and that end users have confidence in the broadband providers' network management and business practices. In sum, the other government interests supporting the rules in addition to preventing consumer deception—preserving an open Internet to encourage competition and remove impediments to infrastructure investment, while enabling consumer choice, end-user control, free expression, and the freedom to innovate without permission—are substantial and justify our transparency requirements.

*B. Fifth Amendment Takings*

563. The open Internet rules also present no cognizable claims under the Fifth Amendment's Takings Clause. Today's decision simply identifies as common carriage the services that broadband Internet access service providers already offer in a manner that carries with it certain statutory duties. Regulatory enforcement of those duties has never been held to raise takings concerns. Correspondingly, our rules do not rise to the level of a *per se* taking because they do not grant third parties a right to physical occupation of the broadband providers' property. Finally, they do not constitute a regulatory taking because they actually enhance the value of broadband networks by protecting the virtuous cycle that drives innovation, user adoption, and infrastructure investment.

564. As an initial matter, we note that our reclassification of broadband Internet access service does not result from compelling the common carriage offering of those services, contrary to the claims of some broadband providers. Rather, our decision simply identifies as common carriage the services that broadband Internet access service providers already voluntarily offer in a manner that, under the Communications Act, carries with it certain statutory duties, which have never been held to raise takings concerns. Today's Order recognizes that broadband Internet access service is a telecommunications service under Title II of the Act. While certain common carriage obligations attach to recognition of this fact, those requirements operate by virtue of the statutory structure we interpret, not in service to a discretionary ''policy goal the Commission seeks to advance.'' Such statutory obligations have never before posed takings issues, and we conclude that today's Order, likewise, does not violate the Fifth Amendment.

565. Verizon specifically contends that without either a finding of monopoly power or a restriction on government entry, ''compelled common carriage would constitute a government taking.'' They cite approvingly Judge Wilkey's observation in *NARUC I* that ''early common carriage regulations were 'challenged as deprivations of property without due process.' '' However, Judge Wilkey continues in the next sentence to explain that Congress has regularly imposed common carrier obligations without a showing of

monopoly power or entry restrictions. Verizon's suggestion, when extended to its logical conclusion, would necessitate rendering unconstitutional any common carriage obligations outside of true government-sponsored monopolies. The courts have taken a much narrower view of both the characteristics necessary for common carrier status and the effect of that status on takings claims when present in a non-monopoly context. Correspondingly, we conclude that today's classifications, without a showing of monopoly power do not constitute takings under the Fifth Amendment.

1. Per Se Takings

566. Some commenters argue that our rules would effect a *per se* taking by granting third parties a perpetual easement onto broadband providers' facilities, a form of physical occupation. These arguments mischaracterize the nature of the rules we adopt today and misapply Fifth Amendment jurisprudence. To qualify as a *per se* taking, the challenged government action must authorize a permanent physical occupation of private property. (The government may also commit a *per se* taking by completely depriving an owner of *all* economically beneficial use of her property. However, the record does not reflect a concern among commenters that our actions today deprive broadband providers of all economically beneficial use of their property—nor do we find one merited—so we limit our discussion to the permanent physical occupation variety of *per se* takings.) This rule, however, is ''very narrow'' and it does not ''question the equally substantial authority upholding a State's broad power to impose appropriate restrictions upon an owner's use of his property.'' The Supreme Court has advised that a *per se* taking is ''relatively rare and easily identified'' and ''presents relatively few problems of proof.''

567. Under this formulation, today's Order does not impose a *per se* taking on broadband providers. Regulation of the transmissions travelling over a broadband providers' property differs substantially from physical occupations which are the hallmark of *per se* takings, such as the installation of cable equipment at issue in *Loretto* v. *Teleprompter CATV Corp.* We do not require the permanent installation of any third-party equipment at broadband providers' network facilities, or deprive broadband providers of existing property interests in their networks—a broadband provider retains complete control over its property. (The Supreme Court has further cabined this *per se* takings rule by noting that some permanent incursions onto private property could be acceptable if the property owner owned the installation and retained discretion in how to deploy it. Were our rules found to impose a permanent physical occupation on broadband providers' networks, broadband services seem to fall squarely within this exception. Broadband Internet access services are characterized as distinctly user-directed. Further, providers retain discretion in the deployment of their facilities and are free to manage traffic through reasonable network management.) Our rules merely regulate the *use* of a broadband Internet access provider's network—they are neither physical nor permanent occupations of private property. Courts have repeatedly declined to extend *per se* takings analysis to rules regulating the transmission of communications traffic over a provider's facilities, and we believe that these decisions comport with the Supreme Court's perspective that permanent physical occupation of property is a narrow category of takings jurisprudence and is ''easily identifiable'' when it does occur.

568. Moreover, to the extent that broadband providers voluntarily open their networks to end users and edge providers, reasonable regulation of the use of their property poses no takings issue. When owners voluntarily invite others onto their property—through contract or otherwise—the courts will not find that a permanent physical occupation has occurred. So long as property owners remain free to avoid physical incursions on their property by discontinuing the services to which it has been dedicated, reasonable conduct regulations can be imposed on the use of such properties without raising *per se* takings concerns. In point of fact, broadband providers regularly invite third parties to transmit signals through their physical facilities by contracting with end users to provide broadband Internet access service and promising access to all or substantially all Internet endpoints. Our rules do not compel broadband providers to offer this service—instead our rules simply regulate broadband providers' conduct with respect to traffic which currently freely flows over their facilities. Thus, to the extent that broadband providers allow any customer to transmit or receive information over its network, the imposition of reasonable conduct rules on the provision of broadband Internet access services does not constitute a *per se* taking. Furthermore, even if the rules did impose a type of physical occupation on the facilities of broadband providers, such an imposition is not an unconstitutional taking because broadband providers are compensated for the traffic passing over their networks. (With respect to the rules governing the broadband Internet access service, broadband providers are compensated through the imposition of subscription fees on their end users.)

2. Regulatory Takings

569. Nor do the rules we adopt today constitute a regulatory taking. Outside of *per se* takings cases, courts analyze putative government takings through ''essentially ad hoc, factual inquiries'' into a variety of unweighted factors such as the ''economic impact of the regulation,'' the degree of interference with ''investment-backed expectations,'' and ''the character of the government action.'' Directing analysis of these factors is a common touchstone—whether the regulatory actions taken are ''functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain.'' Open Internet rules do not implicate such a deprivation of value or control over the networks of broadband providers, and so pose no regulatory takings issues.

570. The economic impact of the rules we adopt today is limited because, in most circumstances, the Internet operates in an open manner today. Indeed, rather than reducing the value of broadband provider property, today's rules likely serve to enhance the value of broadband networks by promoting innovation on the edge of the network, thereby driving consumer demand for broadband Internet access and increasing the networks' value. Further, today's Order does not so burden broadband providers' discretion in managing and deploying their networks to effectively ''oust'' them from ownership and control of their networks. While we have adopted a set of bright-line rules today for some practices, broadband providers are still afforded a great deal of discretion to enter into individualized arrangements with respect to the provision of broadband Internet access services under the no-unreasonable interference/disadvantage standard. The limited scope of the open Internet rules also injects flexibility into our regulatory framework and provides sufficient property protections to take our rules outside the ambit of the Fifth Amendment.

571. Likewise, any investment backed expectations of broadband providers in prior regulatory regimes are minimal. As a general matter, property owners

cannot expect that existing legal requirements regarding their property will remain entirely unchanged. (Additionally, persons operating in a regulated environment develop fewer reliance interests in industries subject to comprehensive regulation.) The Commission has long regulated Internet access services, and there is no doubt that broadband Internet ''falls comfortably within the Commission's jurisdiction.'' Indeed, with respect to broadband Internet access service, claims by broadband providers that our previous regulatory treatment of broadband engendered reliance interests runs counter to the plain language of the 2002 *Cable Modem Declaratory Ruling* and the 2005 *Wireline Broadband Classification Order,* both of which contained notices of proposed rulemaking seeking comment on the retention of Title II-like regulation of those services. Also, because we do not propose to regulate *ex ante* broadband providers' ability to set market rates for the broadband Internet access services they offer, there is no reason to believe that our ruling will deprive broadband providers of the just compensation that is a full answer to any takings claim.

572. In characterizing our proposed rules as a regulatory taking, CenturyLink looks to *Kaiser Aetna,* a case in which the government sought to establish public access rights to a private marina by classifying it as ''navigable waters of the United States. As described above, we think that analogies to real property incursions are inapplicable to the provision of broadband Internet access services. In any event, the facts of *Kaiser* bear little resemblance to the rights and interests implicated by broadband networks. Unlike the small, privately held marina which was not open to the public in *Kaiser Aetna,* broadband Internet access service involves access to substantially all Internet endpoints. While the marina in *Kaiser Aetna* maintained a small fee-paying membership, broadband Internet access services are offered directly to the public at large, as we recognize in their classification as telecommunications services. In sum, open Internet rules do not so burden broadband provider's control and ownership of their networks as to rise to the level of a regulatory taking in violation of the Fifth Amendment. The economic impact of our rules is minimal and our classifications do not frustrate any significant reliance interests.

## VII. Severability

573. We consider the actions we take today to be separate and severable such that in the event any particular action or decision is stayed or determined to be invalid, we would find that the resulting regulatory framework continues to fulfill our goal of preserving and protecting the open Internet and that it shall remain in effect to the fullest extent permitted by law. Though complementary, each of the rules, requirements, classifications, definitions, and other provisions that we establish in this Report and Order on Remand, Declaratory Ruling, and Order operate independently to promote the virtuous cycle, encourage the deployment of broadband on a timely basis, and protect the open Internet.

574. *Severability of Open Internet Rules from One Another.* The open Internet rules we adopt today each operate independently to protect the open Internet, promote the virtuous cycle, and encourage the deployment of broadband on a timely basis. The *Verizon* court recognized as much by holding our initial transparency rule severable from the non-discrimination and no blocking rules from the *2010 Open Internet Order.* We apply that view to today's transparency rule, as well as to the no blocking, no throttling, and no paid prioritization rules and the no-unreasonable interference/disadvantage adopted today. While today's rules put in place a suite of open Internet protections, we find that each of these rules, on its own, serves to protect the open Internet. Each rule protects against different potential harms and thus operates semi-independently from one another. For example, the no-blocking rule protects consumers' right to access lawful content, applications, and services by constraining broadband providers' incentive to block competitors' content. The no throttling rule serves as an independent supplement to this prohibition on blocking by banning the impairment or degradation of lawful content that does not reach the level of blocking. Should the no blocking rule be declared invalid, the no throttling rule would still afford consumers and edge providers significant protection, and thus could independently advance the goals of the open Internet, if not as comprehensively were the no blocking rule still in effect. The same reasoning holds true for the ban on paid prioritization, which protects against particular harms independent of the other bright-line rules. Finally, the no-unreasonable interference/disadvantage standard governs broadband provider conduct generally, providing independent protections against those three harmful practices along with other and new practices that could threaten to harm Internet openness. Were any of these individual rules held invalid, the resulting regulations would remain valuable tools for protecting the open Internet.

575. *Severability of Rules Governing Mobile/Fixed Providers.* We have also made clear today our rules apply to both fixed and mobile broadband service. These are two different services, and thus the application of our rules to either service functions independently. Accordingly, we find that should application of our open Internet rules to either fixed or mobile broadband Internet access services be held invalid, the application of those rules to the remaining mobile or fixed services would still fulfill our regulatory purposes and remain intact.

## VIII. Procedural Matters

### *A. Regulatory Flexibility Analysis*

576. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *2014 Open Internet NPRM.* The Commission sought written public comment on the possible significant economic impact on small entities regarding the proposals addressed in the *Open Internet NPRM,* including comments on the IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is set forth in the Order.

### *B. Paperwork Reduction Act of 1995 Analysis*

577. This document contains new 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 are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

578. In this present document, we require broadband providers to publicly disclose accurate information regarding the commercial terms, performance, and network management practices of their broadband Internet access services sufficient for end users to make informed choices regarding use of such services and for content, application,

service, and device providers to develop, market, and maintain Internet offerings. We have assessed the effects of this rule and find that any burden on small businesses will be minimal because (1) the rule gives broadband providers flexibility in how to implement the disclosure rule, and (2) the rule gives providers adequate time to develop cost-effective methods of compliance.

*C. Congressional Review Act*

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

*D. Data Quality Act*

580. The Commission certifies that it has complied with the Office of Management and Budget Final Information Quality Bulletin for Peer Review, 70 FR 2664 (2005), and the Data Quality Act, Ex. Public Law 106–554 (2001), codified at 44 U.S.C. 3516 note, with regard to its reliance on influential scientific information in the Report and Order on Remand, Declaratory Ruling, and Order in GN Docket No. 14–28.

*E. Accessible Formats*

581. 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), 202–418–0432 (tty). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, *etc.*) by email: *FCC504@fcc.gov*; phone: (202) 418–0530 (voice), (202) 418–0432 (TTY).

## IX. Ordering Clauses

582. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 3, 4, 10, 201, 202, 301, 303, 316, 332, 403, 501, and 503, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 153, 154, 160, 201, 202, 301, 303, 316, 332, 403, 501, 503, and 1302, this Report and Order on Remand, Declaratory Ruling, and Order *is adopted.*

583. *It is further ordered* that parts 1, 8, and 20 of the Commission's rules *are amended* as set forth in Appendix A of the Order.

584. *It is further ordered* that this Report and Order on Remand, Declaratory Ruling, and Order *shall be* effective June 12, 2015, except that the modified information collection requirements in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181 of this document are not applicable until approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a separate document in the **Federal Register** announcing such approval and the relevant effective date(s). It is our intention in adopting the foregoing Declaratory Ruling and these rule changes that, if any provision of the Declaratory Ruling or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Declaratory Ruling and the rules not deemed unlawful, and the application of such Declaratory Ruling and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

585. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of Report and Order on Remand, Declaratory Ruling, and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

586. *It is further ordered,* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order on Remand, Declaratory Ruling, and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

587. *It is further ordered* that the Mozilla Petition to Recognize Remote Delivery Services in Terminating Access Networks and Classify Such Services as Telecommunications Services Under Title II of the Communications Act is *denied.*

## X. Final Regulatory Flexibility Analysis

588. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the *Notice of Proposed Rule Making* (*2014 Open Internet NPRM*) for this proceeding. The Commission sought written public comment on the proposals in the *2014 Open Internet NPRM,* including comment on the IRFA. The Commission received comments on the *2014 Open Internet NPRM* IRFA, which are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*A. Need for, and Objectives of, the Proposed Rules*

589. In its remand of the Commission's *Open Internet Order,* the D.C. Circuit affirmed the underlying basis for the Commission's open Internet rules, holding that ''the Commission [had] more than adequately supported and explained its conclusion that edge provider innovation leads to the expansion and improvement of broadband infrastructure.'' The court also found ''reasonable and grounded in substantial evidence'' the Commission's finding that Internet openness fosters the edge provider innovation that drives the virtuous cycle. Open Internet rules benefit investors, innovators, and end users by providing more certainty to each regarding broadband providers' behavior, and helping to ensure the market is conducive to optimal use of the Internet. Further, openness promotes the Internet's ability to act as a platform for speech and civic engagement, and can help close the digital divide by facilitating the development of diverse content, applications, and services. The record on remand convinces us that broadband providers continue to have the incentives and ability to engage in practices that pose a threat to Internet openness, and as such, rules to protect the open nature of the Internet remain necessary.

590. The Commission's historical open Internet policies and rules have blunted broadband providers' incentives to engage in behavior harmful to the open Internet. Commenters who argue that rules are not necessary overlook the role that the Commission's rules and policies have played in fostering that result. Without rules in place to protect the open Internet, the overwhelming incentives broadband providers have to act in ways that are harmful to investment and innovation threaten both broadband networks and edge content. Accordingly, in the Order, we set a clear scope for and subsequently adopt a number of rules to address such harmful conduct.

591. First, we note that despite traffic exchange's inclusion in the definition and classification of broadband Internet access service, we do not apply the Commission's conduct-based rules to traffic exchange today. Instead, we utilize the regulatory backstop of sections 201 and 202, as well as related enforcement provisions, to provide oversight over traffic exchange arrangements between a broadband Internet access service provider and other networks. Our definition of broadband Internet access service

includes services ''by wire or radio,'' and thus the open Internet rules we adopt apply to both fixed and mobile broadband Internet access services. The record demonstrates the pressing need to apply open Internet rules to fixed and mobile broadband Internet access services alike, and as such, the Commission's prior justifications for treating mobile and fixed services differently under the rules are no longer relevant.

592. We adopt a bright-line rule prohibiting broadband providers from blocking lawful content, applications, services, or non-harmful devices. The no-blocking rule applies to all traffic transmitted to or from end users of a broadband Internet access service, including traffic that may not fit clearly into any of these categories. Further, the no-blocking rule only applies to transmissions of lawful content and does not prevent or restrict a broadband provider from refusing to transmit unlawful material, such as child pornography or copyright-infringing materials. We believe that this approach will allow broadband providers to honor their service commitments to their subscribers without requiring a specified level of service to those subscribers or edge providers under the no-blocking rule. We further believe that the separate no-throttling rule provides appropriate protections against harmful conduct that degrades traffic but does not constitute outright blocking.

593. We also adopt a separate bright-line rule prohibiting broadband providers from impairing or degrading lawful Internet traffic on the basis of content, application, service, or use of a non-harmful device. While certain broadband provider conduct may result in degradation of an end user's Internet experience that is tantamount to blocking, we believe that this conduct requires delineation in an explicit rule rather than through commentary as part of the no-blocking rule. We interpret throttling to mean any conduct by a broadband Internet access service provider that impairs, degrades, slows down, or renders effectively unusable particular content, services, applications, or devices, which is not reasonable network management. We find this prohibition to be as necessary as a rule prohibiting blocking. Without an equally strong no-throttling rule, parties note that the no-blocking rule will not be as effective because broadband providers might otherwise be able to engage in conduct that harms the open Internet but falls short of the outright blocking standard.

594. Under our bright-line rule banning paid prioritization, the Commission will treat all paid prioritization as illegal under our rules except when, in rare circumstances, a broadband provider can convincingly show that its practice would affirmatively benefit the open Internet. Broadband providers may seek a waiver of this rule against paid prioritization, and we provide guidance to make clear the very limited circumstances in which the Commission would be willing to allow paid prioritization. In order to justify waiver, a party would need to demonstrate that a practice would provide some significant public interest benefit and would not harm the open nature of the Internet.

595. In addition to these three bright-line rules, we also set forth a no-unreasonable interference/disadvantage standard, under which the Commission can prohibit practices that unreasonably interfere with or unreasonably disadvantage consumers or edge providers, thus causing harm to the open Internet. This no-unreasonable interference/disadvantage standard will operate on a case-by-case basis and is designed to evaluate other broadband provider policies or practices—not covered by the bright-line rules— and prohibit those that could harm the open Internet. Under this rule, any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage (i) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services or devices available to end users. Reasonable network management shall not be considered a violation of this rule. This standard importantly allows us to prohibit practices that harm Internet openness, while still permitting innovative practices and creations that promote the virtuous cycle. (The *Verizon* court specifically touted the virtuous cycle as a worthy goal and within our authority.)

596. We note that the no-blocking, no-throttling, and no-unreasonable interference/disadvantage standard are all subject to reasonable network management. This network management exception is critical to allow broadband providers to optimize overall network performance and maintain a consistent quality experience for consumers. This exception does not apply to the paid prioritization rule because unlike conduct implicating the no-blocking, no-throttling, or no-unreasonable interference/disadvantage standard, paid prioritization is not a network management practice. We believe that this approach allows broadband providers to optimize overall network performance and maintain a consistent quality experience for consumers while carrying a variety of traffic over their networks.

597. In addition, we adopt our tentative conclusion in the *2014 Open Internet NPRM,* that the Commission should not apply its conduct-based rules to services offered by broadband providers that share capacity with broadband Internet access service over providers' last-mile facilities, while closely monitoring the development of these services to ensure that broadband providers are not circumventing the open Internet rules. While the *2010 Open Internet Order* and the *2014 Open Internet NPRM* used the term ''specialized services'' to refer to these types of services, the term ''non-BIAS data services'' is a more accurate description for this class of services. These services may generally share the following characteristics: First, these services are not used to reach large parts of the Internet. Second, these services are not a generic platform—but rather a specific ''application level'' service. Finally, these services use some form of network management to isolate network capacity from broadband Internet access services: Physically, logically, statistically, or otherwise.

598. We also adopt enhancements to the existing transparency rule, which covers both content and format of disclosures by providers of broadband Internet access services. As the Commission has previously noted, disclosure requirements are among the least intrusive and most effective regulatory measures at its disposal. The enhanced transparency requirements adopted in the present Order serve the same purposes as those required under the 2010 Order: Providing critical information to serve end-user consumers, edge providers of broadband products and services, and the Internet community. Our enhancements to the existing transparency rule will better enable end-user consumers to make informed choices about broadband services by providing them with timely information tailored more specifically to their needs, and will similarly provide edge providers with the information necessary to develop new content, applications, services, and devices that promote the virtuous cycle of investment and innovation.

599. We anticipate that many disputes that will arise can and should be resolved by the parties without Commission involvement. We

encourage parties to resolve disputes through informal discussions and private negotiations, but to the extent these methods are not practical, the Commission will continue to provide backstop mechanisms to address them. We continue to allow parties to file formal and informal complaints, and we will also proactively monitor compliance and take strong enforcement action against parties who violate the open Internet rules. In addition, we institute the use of advisory opinions similar to those issued by DOJ's Antitrust Division to provide clarity, guidance, and predictability concerning the open Internet rules. We also create an ombudsperson position that will serve as a point of contact for open Internet issues at the Commission to help consumers and edge providers direct their inquiries and complaints to the appropriate parties.

600. The legal basis for the Open Internet rules we adopt today relies on multiple sources of legal authority, including section 706, Title II, and Title III of the Communications Act. We conclude that the best approach to achieving our open Internet goals is to rely on several, independent, yet complementary sources of legal authority. Our authority under section 706 is not mutually exclusive with our authority under Titles II and III of the Act. Rather, we read our statute to provide independent sources of authority that work in concert toward common ends. Under section 706, the Commission has the authority to take certain regulatory steps to encourage and accelerate the deployment of broadband to all Americans. Under Title II, the Commission has authority to ensure that common carriers do not engage in unjust and unreasonable practices or preferences. And under Title III, the Commission has authority to protect the public interest through spectrum licensing. Each of these sources of authority provides an alternative ground to independently support our open Internet rules.

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

601. In response to the *2014 Open Internet NPRM,* five entities filed comments, reply comments, and/or *ex parte* letters that specifically addressed the IRFA to some degree: ADTRAN, the American Cable Association (ACA), The National Cable & Telecommunications Association (NCTA), NTCA—the Rural Broadband Association (NTCA), and the Wireless Internet Service Providers Association (WISPA). Some of these, as well as other entities filed comments or *ex parte* letters that more generally considered the small business impact of our proposals. The Office of Advocacy of the Small Business Administration (SBA) also filed a letter encouraging the FCC to use the RFA to reach out to small businesses in the course of the proceeding. The SBA particularly encouraged the Commission to ''exercise appropriate caution in tailoring its final rules to mitigate any anticompetitive pressure on small broadband providers as well.'' We considered the proposals and concerns described by the various commenters, including the SBA, when composing the Order and accompanying rules.

602. Some commenters expressed concern that in the IRFA, we had not adequately considered the varying sizes of broadband providers and the effect of our proposals on smaller entities. Contrary to these concerns, when making the determination reflected in the Order, we carefully considered the impact of our actions on small entities. The record also reflects small entities' concern that the rules proposed in the *2014 Open Internet NPRM* did not include sufficient protection for small edge providers and broadband providers. Thus, the rules adopted in the Order reflect a careful consideration of the impact that our rules will have both on small edge providers and on small broadband providers. The record also reflects the concerns of some commenters that enhanced transparency requirements will be particularly burdensome for smaller providers. However, in the *2014 Open Internet NPRM* IRFA, we specifically sought comment on whether there are ways the Commission or industry associations could reduce burdens on broadband providers in complying with the proposed enhanced transparency rule through the use of a voluntary industry standardized glossary, or through the creation of a dashboard that permits easy comparison of the policies, procedures, and prices of various broadband providers throughout the country.

603. NCTA and others also state that the IRFA was insufficiently specific considering the obligations and impact of the classification of broadband Internet access service as a Title II service. We disagree with this contention as well. We believe that the IRFA was adequate and that the opportunity for parties, including small entities, to comment in a publicly accessible docket on the proposals contained within the *2014 Open Internet NPRM* was sufficient. The opportunity for comments, replies, and *ex parte* presentations more than adequately shaped the universe of potential obligations that could stem from our final rules. This was reflected in the overwhelming outpouring of comment on the proposals contained in the NPRM: Including many comments by and on behalf of small entities. The IRFA described that the *2014 Open Internet NPRM* sought comment on the best source of authority for protecting Internet openness, whether section 706, Title II of the Communications Act of 1934, as amended, and/or other sources of legal authority such as Title III of the Communications Act for wireless services.

*C. Description and Estimate of the Number of Small Entities To Which the Rules Would Apply*

604. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

1. Total Small Entities

605. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. In addition, 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 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that

most governmental jurisdictions are small.

2. Broadband Internet Access Service Providers

606. The rules adopted in the Order apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. For the second category, the data show that 1,274 firms operated for the entire year. Of those, 1,252 had annual receipts below $25 million per year. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

607. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Final Regulatory Flexibility Analysis.

3. Wireline Providers

*608. Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

*609. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the Order.

610. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

*611. Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the Order.

*612. Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Order.

4. Wireless Providers—Fixed and Mobile

613. The broadband Internet access service provider category covered by this Order may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility

events, unjust enrichment issues are implicated.

*604. Wireless Telecommunications Carriers* (*except Satellite*). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

*605. Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

*606. 1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

*607. Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

*608. Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C– and F–Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F–Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C–Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C–, D–, E–, and F–Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

609. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C–, D–, E–, and F–Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C–, D–, E–, and F–Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

*610. Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

611. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

612. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation

authorizations are held by small entities, as defined by the SBA.

*613. Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

614. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

*615. Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

*616. 700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

*617. Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

*618. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

*619. 3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small

entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

*620. Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

*621. Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

622. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

623. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

5. Satellite Service Providers

*624. Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

625. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 570 firms that operated for the entire year. Of this total, 530 firms had annual receipts of under $30 million, and 40 firms had receipts of over $30 million. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

626. The second category of Other Telecommunications comprises, *inter alia,* ''establishments primarily engaged in providing specialized

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.'' For this category, Census Bureau data for 2007 show that there were a total of 1,274 firms that operated for the entire year. Of this total, 1,252 had annual receipts below $25 million per year. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

6. Cable Service Providers

627. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

*628. Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 2,048 firms in this category that operated for the entire year. Of this total, 1,393 firms had annual receipts of under $10 million, and 655 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small.

*629. Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there were 1,141 cable companies at the end of June 2012. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

*630. Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

7. Electric Power Generators, Transmitters, and Distributors

*631. Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of ''establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees. Based on this data, a majority of these firms can be considered small.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

632. The Order clarifies and adopts certain incremental enhancements to the existing transparency rule, which was adopted in 2010, and will continue to require providers of broadband Internet access services to ''publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.'' We summarize below the record keeping and reporting obligations of the accompanying Order. Additional information on each of these requirements can be found in the Order.

633. First, we clarify that all of the pieces of information described in paragraphs 56 and 98 of the 2010 *Open Internet Order* have been required as part of the current transparency rule, and we will continue to require the information as part of our enhanced rule. The only exception is the requirement to disclose ''typical frequency of congestion,'' which we no longer require since it is superseded by more precise disclosures already required by the rule, such as actual performance. Also, the requirement that all disclosures made by a broadband provider be accurate includes the need to maintain the accuracy of these disclosures.

634. Second, we enhance and describe in more specific terms than in 2010 the information to be provided in disclosing commercial terms, network performance characteristics, and network practices. For example, in meeting the existing requirement to disclose ''actual performance,''

providers of broadband Internet access services will be required to report packet loss, in addition to the already required metrics of speed and latency.

635. Third, we require that providers directly notify end users if their particular use of a network will trigger a network practice, based on a user's demand during more than the period of congestion, that is likely to have a significant impact on the end user's use of the service. The purpose of such notification is to provide the affected end users with sufficient information and time to consider adjusting their usage to avoid application of the practice.

636. Fourth, we establish a voluntary safe harbor that providers may use in meeting the existing requirement to make transparency disclosures in a format that meets the needs of end users. The safe harbor consists of the use of a standalone disclosure targeted to end users. Based on concerns raised in the record by smaller providers of broadband Internet access service, however, we do not at this time require use of this standalone format, and instead have submitted this issue to the Consumer Advisory Committee for further consideration.

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

637. 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. We have considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *2014 Open Internet NPRM* and its IRFA, in reaching its final conclusions and taking action in this proceeding.

638. We considered, for example, a variety of approaches to deal with paid prioritization, and we determined that a flat ban on paid prioritization has advantages over alternative approaches identified in the record. We note that this approach relieves small edge providers, innovators, and consumers of the burden of detecting and challenging instances of harmful paid prioritization. Related to this issue, smaller edge providers expressed concern that they do not have the resources to fight against commercially unreasonable practices, which could result in an unfair playing field before the Commission. Still others argued that the standard would permit paid prioritization, which could disadvantage smaller entities and individuals. Given these concerns, we declined to adopt our proposed rule to prohibit practices that are not commercially reasonable. (Based on the record before us, we were persuaded that adopting a legal standard prohibiting commercially unreasonable practices is not the most effective or appropriate approach for protecting and promoting an open Internet.)

639. With regard to our no-unreasonable interference/disadvantage standard, we were mindful that vague or unclear regulatory requirements could stymie rather than encourage innovation, and found that the approach we adopted provides sufficient certainty and guidance to consumers, broadband providers, and edge providers—particularly smaller entities that might lack experience dealing with broadband providers—while also allowing parties flexibility in developing new services.

640. We found our existing informal complaint rule offers an accessible and effective mechanism for parties—including consumers and small businesses with limited resources—to report possible noncompliance with our open Internet rules without being subject to burdensome evidentiary or pleading requirements. Accordingly we declined to adopt proposals modifying the existing standard.

641. We also decline to adopt arbitration procedures or to mandate arbitration for parties to open Internet complaint proceedings. Under the rules adopted today, parties are still free to engage in mediation and outside arbitration to settle their open Internet disputes, but alternative dispute resolution will not be required. We noted commenters' concerns that mandatory arbitration, in particular, may more frequently benefit the party with more resources and more understanding of dispute procedure, and therefore should not be adopted.

642. In formulating the enhanced disclosure requirements, we crafted rules that strike a balance between compliance burdens to industry and utility for end-user consumers, edge providers, and the Internet community. We considered several additional metrics contemplated in the NPRM, but ultimately declined to require their disclosure in the Order, concluding that the adopted enhancements to transparency were sufficient to protect consumers. (For example, we do not require disclosure of the source of congestion due to the difficulty in determining the source, and the corresponding additional burden in requiring that information to be disclosed.) We also recognized with respect to the nature of disclosures that there are differences between fixed and mobile broadband networks.

643. The record reflects the concerns of some commenters that enhanced transparency requirements will be particularly burdensome for smaller providers. ACA, for example, suggests that smaller providers be exempted from the provision of such disclosures. ACA states that its member companies are complying with the current transparency requirements, which ''strike the right balance between edge provider and consumer needs for pertinent information and the need to provide ISPs with some flexibility in how they disclose pertinent information.'' We believe that the enhanced requirements adopted herein are incremental in nature, but nevertheless necessary to provide end-user consumers, edge providers, and the Internet community with better information about the critical network performance metrics, practices, and commercial terms that have a direct impact on their use of the network. Customers of small broadband providers have an equal need for this information. However, out of an abundance of caution, we grant a temporary exemption for small providers, with the potential for that exemption to become permanent. We note that all providers of broadband Internet access service, including small providers, remain subject to the existing transparency rule adopted in 2010.

644. To ensure we have crafted rules that strike a balance between utility for consumers and compliance burdens for industry including smaller providers, we took certain additional important measures. For example, Commission staff continues to refine the mobile MBA program, which could at the appropriate time be declared a safe harbor for mobile broadband providers. In addition, we have declined to require certain disclosures proposed in the *2014 Open Internet NPRM* such as the source of congestion, packet corruption, and jitter in recognition of commenter concerns with the benefits and difficulty

of making these particular disclosures. Noting commenter concerns, we also decline to mandate separate tailored disclosures for different audiences (*e.g.* end users and edge providers) at this time. Lastly, we note that many of the enhanced disclosures specified in the Order may have been required under the current transparency rule. As a result, we believe the enhanced requirements make more explicit many of the existing requirements rather than imposing new regulatory burdens on providers that are in compliance with our current rule.

*F. Report to Congress*

645. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**List of Subjects in 47 CFR Parts 1, 8, and 20**

Cable television, Communications, Common carriers, Communications common carriers, Radio, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 8 and 20 as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.49 is amended by revising paragraph (f)(1)(i) to read as follows:

**§ 1.49 Specifications as to pleadings and documents.**

* * * * *

(f) * * *

(1) * * *

(i) Formal complaint proceedings under Section 208 of the Act and rules in §§ 1.720 through 1.736, pole attachment complaint proceedings under Section 224 of the Act and rules in §§ 1.1401 through 1.1424, and formal complaint proceedings under Open Internet rules §§ 8.12 through 8.17, and;

* * * * *

## PART 8—PROTECTING AND PROMOTING THE OPEN INTERNET

■ 3. The authority citation for part 8 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 160, 201, 202, 301, 303, 316, 332, 403, 501, 503, and 1302.

■ 4. The heading for part 8 is revised as set forth above.

■ 5. Section 8.1 is revised to read as follows:

**§ 8.1 Purpose.**

The purpose of this part is to protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission, and thereby to encourage the deployment of advanced telecommunications capability and remove barriers to infrastructure investment.

**§ 8.11 [Redesignated as § 8.2]**

■ 6. Section 8.11 is redesignated as § 8.2 and is revised to read as follows:

**§ 8.2 Definitions.**

(a) *Broadband Internet access service.* A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this part.

(b) *Edge provider.* Any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.

(c) *End user.* Any individual or entity that uses a broadband Internet access service.

(d) *Fixed broadband Internet access service.* A broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services (including fixed unlicensed wireless services), and fixed satellite services.

(e) *Mobile broadband Internet access service.* A broadband Internet access service that serves end users primarily using mobile stations.

(f) *Reasonable network management.* A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

■ 7. Section 8.5 is revised to read as follows:

**§ 8.5 No blocking.**

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.

■ 8. Section 8.7 is revised to read as follows:

**§ 8.7 No throttling.**

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management.

**§ 8.9 [Redesignated as § 8.19]**

■ 9. Section 8.9 is redesignated as § 8.19.

■ 10. Add new § 8.9 to read as follows:

**§ 8.9 No paid prioritization.**

(a) A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization.

(b) ''Paid prioritization'' refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either;

(1) In exchange for consideration (monetary or otherwise) from a third party, or

(2) To benefit an affiliated entity.

(c) The Commission may waive the ban on paid prioritization only if the petitioner demonstrates that the practice would provide some significant public

interest benefit and would not harm the open nature of the Internet.

■ 11. Add new § 8.11 to read as follows:

**§ 8.11 No unreasonable interference or unreasonable disadvantage standard for Internet conduct.**

Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.

■ 12. Section 8.13 is amended by revising paragraphs (a)(4), and (b), and by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding new paragraph (c) to read as follows:

**§ 8.13 General pleading requirements.**

(a) * * *

(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address, telephone number, email address, and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and, to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

* * * * *

(b) *Initial Complaint: Fee remittance; Service; Copies to be filed.* The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106 of this chapter) and:

(1) Shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System, and, on the same day:

(2) Serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process, if available, on the same date that the complaint is filed with the Commission;

(c) *Subsequent Filings: Service; Copies to be filed.* (1) All subsequent submissions shall be filed using the Commission's Electronic Comment Filing System. In addition, all submissions shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by email, together with a proof of such service in accordance with the requirements of § 1.47(g) of this chapter.

(2) Service is deemed effective as follows:

(i) Service by hand delivery that is delivered to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day;

(ii) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(iii) Service by email that is fully transmitted to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day.

(3) Parties shall provide hard copies of all submissions to staff in the Market Disputes Resolution Division of the Enforcement Bureau upon request.

* * * * *

■ 13. Section 8.14 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) and adding new paragraph (g) to read as follows:

**§ 8.14 General formal complaint procedures.**

* * * * *

(g) *Request for written opinion from outside technical organization.* (1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Enforcement Bureau may, in its discretion, request a written opinion from an outside technical organization regarding one or more issues in dispute.

(2)(i) Wherever possible, the opinion shall be requested from an outside technical organization whose members do not include any of the parties to the proceeding.

(ii) If no such outside technical organization exists, or if the Enforcement Bureau in its discretion chooses to request an opinion from an organization that includes among its members a party to the proceeding, the Bureau shall instruct the organization that any representative of a party to the proceeding within the organization may not participate in either the organization's consideration of the issue(s) referred or its drafting of the opinion.

(iii) No outside technical organization shall be required to respond to the Bureau's request.

(3)(i) If an opinion from an outside technical organization is requested and the request is accepted, the Enforcement Bureau shall notify the parties to the dispute of the request within ten (10) days and shall provide them copies of the opinion once it is received.

(ii) The outside technical organization shall provide its opinion within thirty (30) days of the Enforcement Bureau's request, unless otherwise specified by the Bureau.

(iii) Parties shall be given the opportunity to file briefs in reply to the opinion.

* * * * *

■ 14. Section 8.16 is revised to read as follows:

**§ 8.16 Confidentiality of proprietary information.**

(a) Any materials generated in the course of a proceeding under this part may be designated as proprietary by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b) (1) through (9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating ''Public Version.'' The redacted document shall be machine-readable whenever technically possible.

Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contain the proprietary information and clearly marks each page of the unredacted confidential version with a header stating ''Confidential Version.'' The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of § 1.47(g) of this chapter and § 8.13(c)(1)(a) through (c).

(b) Except as provided in paragraph (c) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The Commission will entertain, subject to a proper showing under § 0.459 of this chapter, a party's request to further restrict access to proprietary information. Pursuant to § 0.459 of this chapter, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may not be submitted by means of the Commission's Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.

(d) The individuals designated in paragraphs (b)(1) through (3) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(e) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (b) and (c) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(f) Upon termination of a complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

■ 16. Section 8.18 is added to read as follows:

**§ 8.18 Advisory opinions.**

(a) *Procedures.* (1) Any entity that is subject to the Commission's jurisdiction may request an advisory opinion from the Enforcement Bureau regarding its own proposed conduct that may implicate the open Internet rules or any rules or policies related to the open Internet that may be adopted in the future. Requests for advisory opinions may be filed via the Commission's Web site or with the Office of the Secretary and must be copied to the Chief of the Enforcement Bureau and the Chief of the Investigations and Hearings Division of the Enforcement Bureau.

(2) The Enforcement Bureau may, in its discretion, refuse to consider a request for an advisory opinion. If the Bureau declines to respond to a request, it will inform the requesting party in writing.

(3) Requests for advisory opinions must relate to prospective or proposed conduct that the requesting party intends to pursue. The Enforcement Bureau will not respond to requests for opinions that relate to ongoing or prior conduct, and the Bureau may initiate an enforcement investigation to determine whether such conduct violates the open Internet rules. Additionally, the Bureau will not respond to requests if the same or substantially the same conduct is the subject of a current government investigation or proceeding, including any ongoing litigation or open rulemaking at the Commission.

(4) Requests for advisory opinions must be accompanied by all material information sufficient for Enforcement Bureau staff to make a determination on the proposed conduct for which review is requested. Requesters must certify that factual representations made to the Bureau are truthful and accurate, and that they have not intentionally omitted any information from the request. A request for an advisory opinion that is submitted by a business entity or an organization must be executed by an individual who is authorized to act on behalf of that entity or organization.

(5) Enforcement Bureau staff will have discretion to ask parties requesting opinions, as well as other parties that may have information relevant to the request or that may be impacted by the proposed conduct, for additional information that the staff deems necessary to respond to the request. Such additional information, if furnished orally or during an in-person conference with Bureau staff, shall be promptly confirmed in writing. Parties are not obligated to respond to staff inquiries related to advisory opinions. If a requesting party fails to respond to a staff inquiry, then the Bureau may dismiss that party's request for an advisory opinion. If a party voluntarily responds to a staff inquiry for additional information, then it must do so by a deadline to be specified by Bureau staff. Advisory opinions will expressly state that they rely on the representations made by the requesting party, and that they are premised on the specific facts and representations in the request and any supplemental submissions.

(b) After review of a request submitted hereunder, the Enforcement Bureau will:

(1) Issue an advisory opinion that will state the Bureau's present enforcement intention with respect to the proposed open Internet practices;

(2) Issue a written statement declining to respond to the request; or;

(3) Take such other position or action as it considers appropriate. An advisory opinion states only the enforcement intention of the Enforcement Bureau as of the date of the opinion, and it is not binding on any party. Advisory opinions will be issued without prejudice to the Enforcement Bureau or the Commission to reconsider the questions involved, or to rescind or revoke the opinion. Advisory opinions will not be subject to appeal or further review.

(c) The Enforcement Bureau will have discretion to indicate the Bureau's lack of enforcement intent in an advisory opinion based on the facts, representations, and warranties made by the requesting party. The requesting party may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and representations necessary to issuance of the opinion and the situation conforms to the situation described in the request for opinion. The Bureau will not bring an enforcement action against a requesting party with respect to any action taken in good faith reliance upon an advisory opinion if all of the relevant facts were fully, completely, and accurately presented to the Bureau, and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's or Bureau's approval.

(d) *Public disclosure.* The Enforcement Bureau will make advisory opinions available to the public on the Commission's Web site. The Bureau will also publish the initial request for guidance and any associated materials. Parties soliciting advisory opinions may request confidential treatment of information submitted in connection with a request for an advisory opinion pursuant to § 0.459 of this chapter.

(e) *Withdrawal of request.* Any requesting party may withdraw a request for review at any time prior to receipt of notice that the Enforcement Bureau intends to issue an adverse opinion, or the issuance of an opinion. The Enforcement Bureau remains free, however, to submit comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information, whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Bureau from taking such action at such time thereafter as it deems appropriate. The Bureau reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

## PART 20—COMMERCIAL MOBILE SERVICES

■ 17. The authority citation for part 20 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 154(i), 201(b), 225, 301, 303(b), 303(g), 303(r), 316, 403, 615a, 615a–1, 615b, and 47 U.S.C. 615c.

■ 18. Section 20.3 is amended by revising paragraph (b) in the definition of ''Commercial mobile radio service'', designating in the correct alphabetical order the definition of ''Incumbent Wide Area SMR Licensees,'' revising paragraph (a) in the definition of ''Interconnected Service'' and revising the definition of ''Public Switched Network'' to read as follows:

**§ 20.3 Definitions.**

* * * * *

*Commercial mobile radio service.*

* * *

(b) The functional equivalent of such a mobile service described in paragraph (a) of this section, including a mobile broadband Internet access service as defined in § 8.2 of this chapter.

* * * * *

*Interconnected Service.* A service:

(a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from other users on the public switched network; or

* * * * *

*Public Switched Network.* The network that includes any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that uses the North American Numbering Plan, or public IP addresses, in connection with the provision of switched services.

* * * * *

[FR Doc. 2015–07841 Filed 4–10–15; 8:45 am]

BILLING CODE 6712–01–P


# FEDERAL REGISTER

Vol. 80 Monday,
No. 70 April 13, 2015

Part III

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2015–16 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2017 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Proposed Rules

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[Docket No. FWS–HQ–MB–2014–0064; FF09M21200–156–FXMB1231099BPP0]**

**RIN 1018–BA67**

## Migratory Bird Hunting; Proposed 2015–16 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2017 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

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

**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2015–16 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2015–16 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2017 spring and summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

**DATES:** You must submit comments on the proposed regulatory alternatives for the 2015–16 duck hunting seasons on or before June 26, 2015. Following subsequent **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 29, 2015, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 29, 2015. Tribes must submit proposals and related comments on or before June 5, 2015. Proposals from the Alaska Migratory Bird Co-management Council for the 2017 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service on or before June 13, 2015.

**ADDRESSES:** You may submit comments on the proposals by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2014–0064.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–HQ–MB–2014–0064; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section, below, for more information).

Send your proposals for the 2017 spring and summer migratory bird subsistence season in Alaska to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; or fax to (907) 786–3306; or email to *ambcc@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS:MB, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1714. For information on the migratory bird subsistence season in Alaska, contact Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3499.

**SUPPLEMENTARY INFORMATION:**

### Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any . . . bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory game bird management is a cooperative effort of State, Tribal, and Federal governments.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation agencies and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.,* dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin prior to the last week in September. Late hunting seasons generally start during or after the last week in September and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of

migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks are established for season lengths, bag limits, and areas for migratory game bird hunting, States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

**Notice of Intent To Establish Open Seasons**

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2015–16 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2015–16 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2015–16 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, and a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

**Regulatory Schedule for 2015–16**

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: The need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits before the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: Early seasons and late seasons (further described and discussed above in the Background and Overview section).

Major steps in the 2015–16 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black Ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled Ducks
   viii. Wood Ducks
   ix. Youth Hunt
   x. Mallard Management Units
   xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2015–16 duck hunting seasons in mid-July. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 15, 2015, and those for late seasons on or about September 19, 2015.

**Request for 2017 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska**

*Background*

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season by indigenous inhabitants.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring and summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring and summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2017, for the spring and summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close before September 1.

**Alaska Spring and Summer Subsistence Harvest Proposal Procedures**

We will publish details of the Alaska spring and summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council.* The public may submit proposals to the Co-management Council during the period of November 1–December 15, 2015, to be acted upon for the 2017 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

(b) *Flyway Councils.*

(1) The Co-management Council will submit proposed 2017 regulations to all Flyway Councils for review and comment. The Council's recommendations must be submitted before the Service Regulations Committee's late season regulations meeting (July 2015) in order to be approved for spring and summer harvest beginning April 2 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service Regulations Committee.* The Co-management Council will submit proposed annual regulations to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring and summer regulations for Alaska will be published in the **Federal Register** in the preceding winter after review and consideration of any public comments received.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2017 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by August 1, 2016, for Council comments and Service action at the October 2016 SRC meeting.

**Review of Public Comments**

This proposed rulemaking contains the proposed regulatory alternatives for the 2015–16 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2014–15 final frameworks (see August 28, 2014, **Federal Register** (79 FR 51402) for early seasons and September 23, 2014, **Federal Register** (79 FR 56864) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2015–16 season. We seek additional information and comments on this proposed rule.

**Consolidation of Notices**

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for tribal proposals, and the request for Alaska migratory bird subsistence seasons with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (Idaho, Oregon, Washington, Hawaii, and the Pacific Islands)—Nanette Seto, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Greg Hughes, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Dave Scott, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; (612) 713–5101.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico and Virgin Islands, South Carolina, and Tennessee)—Laurel Barnhill, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Pam Toschik, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; (413) 253–8610.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—Casey Stemler, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Pete Probasco, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Region 8 (California and Nevada)—U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825–1846; (916) 414–6727.

**Requests for Tribal Proposals**

*Background*

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached

agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

*Details Needed in Tribal Proposals*

Tribes that wish to use the guidelines to establish special hunting regulations for the 2015–16 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations; and

(3) Tribal capabilities to enforce migratory game bird hunting regulations.

For those situations where it could be shown that failure to limit Tribal harvest could seriously impact the migratory game bird resource, we also request information on the methods employed to monitor harvest and any potential steps taken to limit level of harvest.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

*Tribal Proposal Procedures*

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2015–16 hunting season should submit their proposals as soon as possible, but no later than June 5, 2015.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

**Public Comments**

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA 22041.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

**NEPA Consideration**

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We

published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2014–15,'' with its corresponding August 21, 2014, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

**Endangered Species Act Consideration**

Before issuance of the 2015–16 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

**Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). We will use this analysis again for the 2015–16 season. This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, the 2012–13, and the 2014–15 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

**Regulatory Flexibility Act**

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

**Clarity of the Rule**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Small Business Regulatory Enforcement Fairness Act**

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

**Paperwork Reduction Act**

This proposed rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 4/30/2015).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0124—Alaska Migratory Bird Subsistence Harvest Household Survey (expires 6/30/2016).

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

**Takings Implication Assessment**

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

**Energy Effects—Executive Order 13211**

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2015–16 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Authority**

The rules that eventually will be promulgated for the 2015–16 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 26, 2015.

**Michael J. Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

**Proposed 2015–16 Migratory Game Bird Hunting Regulations (Preliminary)**

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. No changes from the final 2014–15 frameworks established on August 28 and September 23, 2014 (79 FR 51402 and 79 FR 56864) are being proposed at this time. Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

**1. Ducks**

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

*A. General Harvest Strategy*

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2015–16 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. (We enact special hunting restrictions for species of special concern, such as canvasbacks, scaup, and pintails).

Pacific, Central, and Mississippi Flyways

The prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways is based on the status of mallards that contributes primarily to each Flyway. In the Pacific Flyway, we set hunting regulations based on the status and dynamics of western mallards. Western mallards are those breeding in Alaska and the northern Yukon Territory (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys). In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America (Federal survey strata 13–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan).

For the 2015–16 season, we recommend continuing to use independent optimization to determine the optimal regulatory choice for each mallard stock. This means that we would develop regulations for mid-continent mallards and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this new AHM decision framework in the July 24, 2008, **Federal Register** (73 FR 43290).

Atlantic Flyway

The prescribed regulatory alternative for the Atlantic Flyway is determined annually based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). In 2012, we proposed and subsequently implemented several changes related to the population models used in the eastern mallard AHM protocol (77 FR 42920; July 20, 2012). We propose continuation of the AHM process for the 2015–16 season using the revised model set to inform eastern mallard harvest regulations until a fully revised AHM protocol is finalized. Further details on the revised models and results of simulations of this interim harvest policy are available on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov.*

Final 2015–16 AHM Protocol

We will detail the final AHM protocol for the 2015–16 season in the early-season proposed rule, which we will publish in mid-July (see 2015 Schedule of Regulations Meetings and **Federal Register** Publications at the end of this proposed rule for further information). We will propose a specific regulatory alternative for each of the Flyways during the 2015–16 season after survey information becomes available in late summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm.*

*B. Regulatory Alternatives*

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501; March 19, 2002).

For 2015–16, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives in mid-July. We will accept public comments until June 26, 2015, and you should send your comments to an address listed under the caption **ADDRESSES.**

*C. Zones and Split Seasons*

Zones and split seasons are ''special regulations'' designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl and other migratory game bird populations. For ducks, States have been allowed the option of dividing their allotted hunting days into two (or in some cases three) segments to take advantage of species-specific peaks of abundance or to satisfy hunters in different areas who want to hunt during the peak of waterfowl abundance in their area. However, the split-season option does not fully satisfy many States who wish to provide a more equitable distribution of harvest opportunities. Therefore, we also have allowed the establishment of independent seasons in up to four zones within States for the purpose of providing more equitable distribution of harvest opportunity for hunters throughout the State.

In 1978, we prepared an environmental assessment (EA) on the use of zones to set duck hunting regulations. A primary tenet of the 1978 EA was that zoning would be for the primary purpose of providing equitable distribution of duck hunting opportunities within a State or region and not for the purpose of increasing total annual waterfowl harvest in the zoned areas. In fact, target harvest levels were to be adjusted downward if they exceeded traditional levels as a result of zoning. Subsequent to the 1978 EA, we conducted a review of the use of zones and split seasons in 1990. In 2011, we prepared a new EA analyzing some specific proposed changes to the zone and split season guidelines. The current guidelines were then finalized in 2011 (76 FR 53536; August 26, 2001).

Currently, every 5 years, States are afforded the opportunity to change the zoning and split season configuration within which they set their annual duck hunting regulations. The next regularly scheduled open season for changes to zone and split season configurations will be in 2016, for use during the 2016–20 period. In 2011, we stated that in order to allow sufficient time for States to solicit public input regarding their selections of zone and split season configurations in 2016, we would reaffirm the criteria during the 2015 late-season regulations process and that States should notify us of changes to zone and split season configurations by May 1, 2016.

However, as discussed in the September 23, 2014, **Federal Register** (79 FR 56864), and below under 22. Other, we are implementing significant changes to the annual regulatory process as outlined in the 2013 SEIS. While we have spent considerable time the past several years contemplating and planning these changes, one issue that we did not anticipate would be a problem is the timing of the open season for duck zones and split season configurations. The previously identified May 1, 2016, due date for zone and split season configuration changes was developed under the current regulatory process, when that deadline would still allow publication of zone descriptions in the proposed rule for hunting seasons and allow for public comment.

Under the new regulatory schedule we anticipate publishing the proposed rule for all 2016–17 migratory bird seasons sometime this fall—approximately 30 days after the SRC meeting (which is tentatively scheduled for October 28–29, 2015). A final rule tentatively would be published 75 days after the proposed rule (no later than April 1). This schedule would preclude inclusion of zone descriptions in the proposed rule as had been done in past open seasons and would not be appropriate because it would preclude the ability for the public to comment on individual State zone descriptions. Therefore, we need to include proposed 2016–20 zone descriptions in the 2016–17 hunting seasons proposed rule document that will be published later this year. Obviously, this will require a zone configuration deadline much earlier than the previously identified May 1, 2016, deadline.

Considering all of the above, we have decided that a two-phase approach is appropriate. For those States wishing to change zone and split season configurations in time for the 2016–17 season, we will need to receive that new configuration and zone descriptions by December 1, 2015. States that do not send in zone and split season configuration changes until the previously identified May 1, 2016, deadline would not be able to implement those changes until the 2017–18 hunting season. While the next normally scheduled open season after 2016–17 would be 2021–22, we

welcome State and Flyway Council comment on whether this should be pushed back to the 2022–23 season in order to allow those States not able to meet the December 1, 2015, deadline to operate under their new zone and split season configurations for 5 years rather than 4 years.

Lastly, because dove zones and split season configurations are on the same open season schedule, this revision would apply to dove zones as well (see 16. Doves for further discussion).

We apologize for this oversight. However, we will do everything we can to make this transition as smooth as possible and look forward to working with the States and Flyways on any implementation issues.

For the 2016–17 open season, the guidelines for duck zone and split season configurations are as follows:

Guidelines for Duck Zones and Split Seasons

The following zone and split-season guidelines apply only for the *regular* duck season:

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

(2) Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

(3) Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

(4) Once a zone and split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone and split-season configuration must conform to one of the following options:

(1) No more than four zones with no splits,

(2) Split seasons (no more than 3 segments) with no zones, or

(3) No more than three zones with the option for 2-way (2-segment) split seasons in one, two, or all zones.

Grandfathered Zone and Split Arrangements

When we first implemented the zone and split guidelines in 1991, several States had completed experiments with zone and split arrangements different from our original options. We offered those States a one-time opportunity to continue (''grandfather'') those arrangements, with the stipulation that only minor changes could be made to zone boundaries. If any of those States now wish to change their zone and split arrangement:

(1) The new arrangement must conform to one of the 3 options identified above; and

(2) The State cannot go back to the grandfathered arrangement that it previously had in place.

Management Units

We will continue to utilize the specific limitations previously established regarding the use of zones and split seasons in special management units, including the High Plains Mallard Management Unit. We note that the original justification and objectives established for the High Plains Mallard Management Unit provided for additional days of hunting opportunity at the end of the regular duck season. In order to maintain the integrity of the management unit, current guidelines prohibit simultaneous zoning and/or 3-way split seasons within a management unit and the remainder of the State. Removal of this limitation would allow additional proliferation of zone and split configurations and compromise the original objectives of the management unit.

**16. Doves**

In 2006 (see July 28, 2006, **Federal Register**, 71 FR 43008), we approved guidelines for the use of zones and split seasons for doves with implementation beginning in the 2007–08 season. While the initial period was for 4 years (2007–10), we further stated that beginning in 2011, zoning would conform to a 5-year period.

The next open season for changes to dove zone and split configurations will be for the 2016–20 period. As discussed above under C. Zones and Split Seasons for ducks, because of unintentional and unanticipated issues with changing the regulatory schedule for the 2016–17 season, we have decided that a two-phase approach is appropriate. For those States wishing to change zone and split season configurations in time for the 2016–17 season, we will need to receive that new configuration and zone descriptions by December 1, 2015. States that do not send in zone and split season configuration changes until the previously identified May 1, 2016, deadline would not be able to implement those changes until the 2017–18 hunting season. While the next normally scheduled open season after 2016–17 would be 2021–22, we welcome State and Flyway Council comment on whether this should be pushed back to the 2022–23 season in order to allow those States not able to meet the December 1, 2015, deadline to operate under their new zone and split season configurations for 5 years rather than 4 years.

The guidelines are as follows:

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

(2) States may select a zone and split option during an open season. The option must remain in place for the following 5 years except that States may make a one-time change and revert to their previous zone and split configuration in any year of the 5-year period. Formal approval will not be required, but States must notify the Service before making the change.

(3) Zoning periods for dove hunting will conform to those years used for ducks, *e.g.,* 2016–20.

(4) The zone and split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

(5) States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

For the 2016–20 period, any State may continue the configuration used in 2011–15. If changes are made, the zone and split-season configuration must conform to one of the options listed above. If Texas uses a new configuration for the entirety of the 5-year period, it cannot go back to the grandfathered arrangement that it previously had in place.

**21. Falconry**

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards at 50 CFR 21.29. Currently, daily bag limits for falconry for all permitted migratory game birds must not exceed 3 birds, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States. Additionally, other general hunting regulations, including seasons and hunting hours, apply to falconry in each State listed at 50 CFR 21.29. Regular season daily bag limits do not apply to falconry and the falconry daily bag limit

is not in addition to gun daily bag limits.

In 2008, we revised the falconry regulations at 50 CFR 21.29 (73 FR 59448; October 8, 2008). One of the revisions allowed both general and master falconers to possess more raptors taken from the wild (3 and 5, respectively, versus 2 and 3 previously). Additionally, master falconers also are allowed to possess as many captive-bred birds as they wish but these birds must be trained in the pursuit of wild game and used in hunting. Further, these revisions were implemented on a State-by-State basis. That is, the regulations provided that when a State met the requirements for operating under the new regulations, falconry permitting would then be delegated to the State. In 2013, the last remaining 17 States met the new requirements of the 2008 revisions and were added to the list of States operating under the new regulations (78 FR 72830; December 4, 2013).

Historically, we have generally linked the daily migratory game bird bag limit for falconers to the maximum number of raptors they could possess. Based on the aforementioned revisions beginning in 2008 and culminating in 2013, we believe it may be appropriate to consider changes to the falconry daily bag limits. We welcome comments from the States, Flyway Councils, and the general public on the issue.

**22. Other**

In a July 26, 2013, **Federal Register** (78 FR 45376), the Service issued its Record of Decision (ROD) for the migratory bird hunting program, prepared pursuant to National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) regulations at 40 CFR 1505.2. An integral component of that ROD was the decision to promulgate annual migratory bird hunting regulations using a single process for early and late seasons based on predictions derived from long-term biological information and established harvest strategies. We believe this single process is the most effective alternative for addressing key issues identified during the planning process and will best achieve the purposes and goals of the Service and States. At that time, we stated that implementation of the new process was targeted for the 2015–16 regulations cycle.

In the April 30, 2014, proposed rule (79 FR 24512) we discussed how under this new process, the current early and late season regulatory actions will be combined into a new single process. Regulatory proposals will be developed using biological data from the preceding year(s), model predictions, or most recently accumulated data that are available at the time the proposals are being formulated. Individual harvest strategies will be modified using data from the previous year(s) because the current year's data would not be available for many of the strategies. Some technical work will be necessary over a period of years to adjust the underlying biological models to the new regulatory time scale. During this transition period, harvest strategies and prescriptions will be modified to fit into the new regulatory schedule. These adjustments could be accomplished immediately upon adoption of the new process. Many existing regulatory prescriptions used for Canada geese, sandhill cranes, mourning doves, and American woodcock currently work on this basis. The process will be somewhat less precise in some instances because population projections would be used instead of current-year status information. However, the uncertainty associated with these predictions will be accounted for through the adaptive management process. This uncertainty is not expected to result in a disproportionately higher harvest rate for any stock, nor is it likely to substantially diminish harvest opportunities, either annually or on a cumulative basis. Reducing the number of meetings could lower administrative costs by 40 percent per year and substantially lower the Service's carbon footprint due to a decrease in travel and a reduction in the costs associated with the additional meetings.

Obviously, under this new process, the administrative, meeting, and **Federal Register** schedule will all change significantly. In the ROD, we described a meeting schedule consisting of SRC regulatory meetings in March or April. At the latest, proposed frameworks would be available for public review by early June and final frameworks published by mid-August. The new schedule also allows 30–60 days for public input and comments (currently, the comment period can be as short as 10 days). Further, the ROD stated that the four Flyway Councils may need to meet only once instead of twice per year, and the SRC would meet twice a year, once sometime during fall or early winter (September through January) and once thereafter, instead of the three times they currently convene.

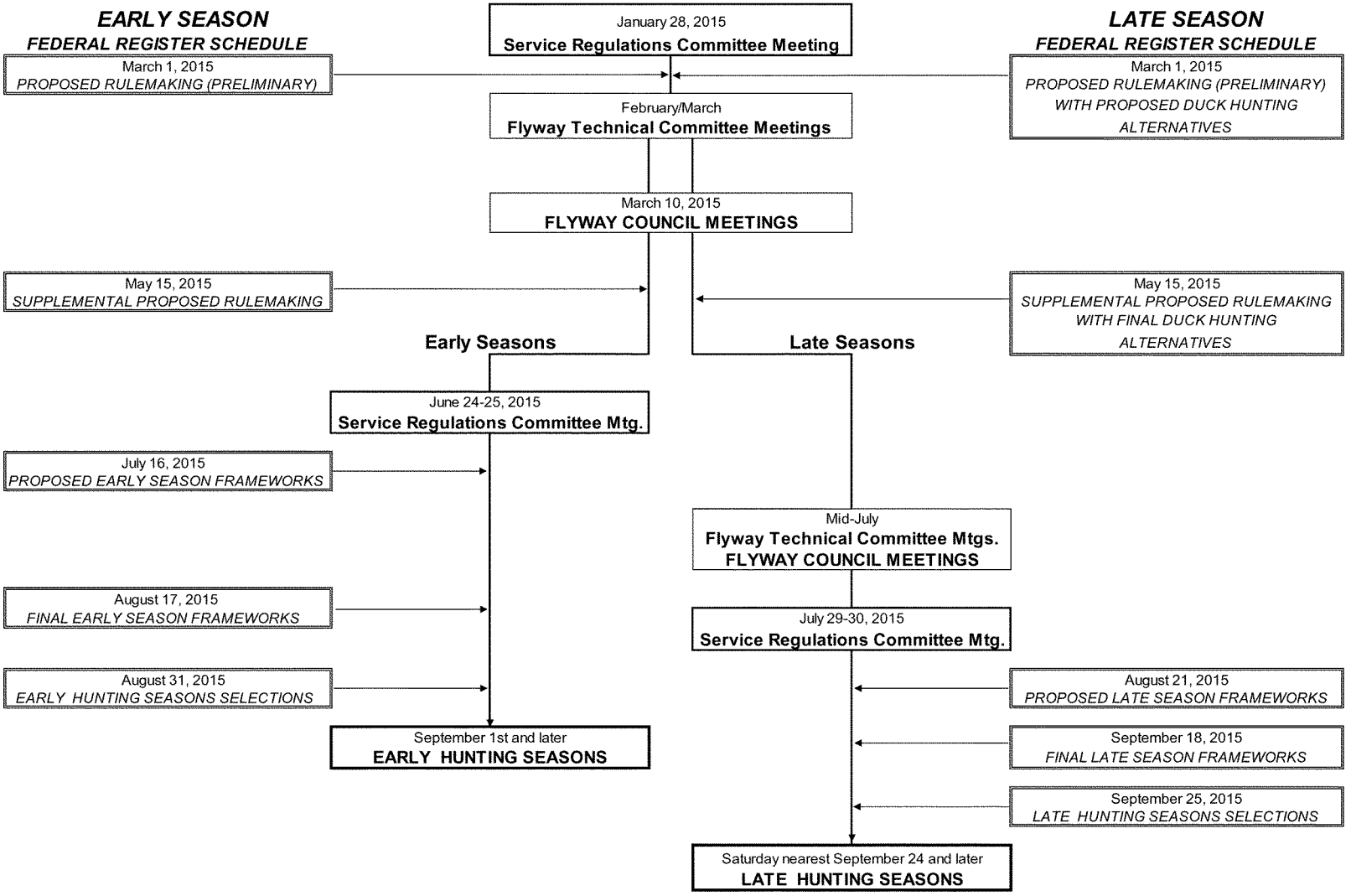
Over the last year we have worked with the Flyway Councils on a number of administrative, meeting, and **Federal Register** schedule timing options to implement the new regulatory process. As we stated in the September 23, 2014, final rule (79 FR 56864), these discussions have led us to a mutually agreeable regulatory schedule that begins earlier than was envisioned in the ROD. We plan to implement the new regulatory schedule this summer when the regulatory cycle begins for the 2016–17 hunting seasons. As a benefit to the public, we will again review and discuss these changes here before their implementation this summer because of the significantly different regulatory schedule and the fact that the process will begin much earlier than that currently utilized.

Major steps in the 2016–17 regulatory cycle relating to biological information availability, open public meetings, and **Federal Register** notifications are illustrated in the diagram at the end of this rule. Dates, including survey and assessment information and publications of **Federal Register** documents are target dates largely consisting of either specific targets or target windows. Additional information on meeting dates and locations will be provided later this year with publication of specific meeting notices and the proposed rulemaking for the 2016–17 hunting seasons.

In summary, the 2016–17 regulatory schedule would begin in mid-June 2015 with the first SRC meeting of the forthcoming year. Flyway technical sections and councils would then meet in September and early October following the release of the waterfowl and webless population status reports in mid-August and the AHM report in early September. After the last Flyway Council meeting, the SRC and Flyway Council Consultants would meet to review information on the current status of migratory shore and upland game birds and waterfowl and develop recommendations for the 2016–17 regulations for these species. Proposed season frameworks, a 30-day public comment period, and final season frameworks would then culminate with publication of all migratory game bird hunting seasons in late May to mid-June of 2016 for the 2016–17 hunting seasons.

As we previously stated, however, there will remain some technical work necessary over a period of years to adjust the underlying biological models to the new regulatory time scale. We look forward to continuing work on these issues with the Flyway Councils. For a more detailed discussion of the various technical aspects of the new process, we refer the reader to the 2013 SEIS available on our Web site at *http://www.fws.gov/migratorybirds.*

# SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS FOR THE 2015-16 SEASONS



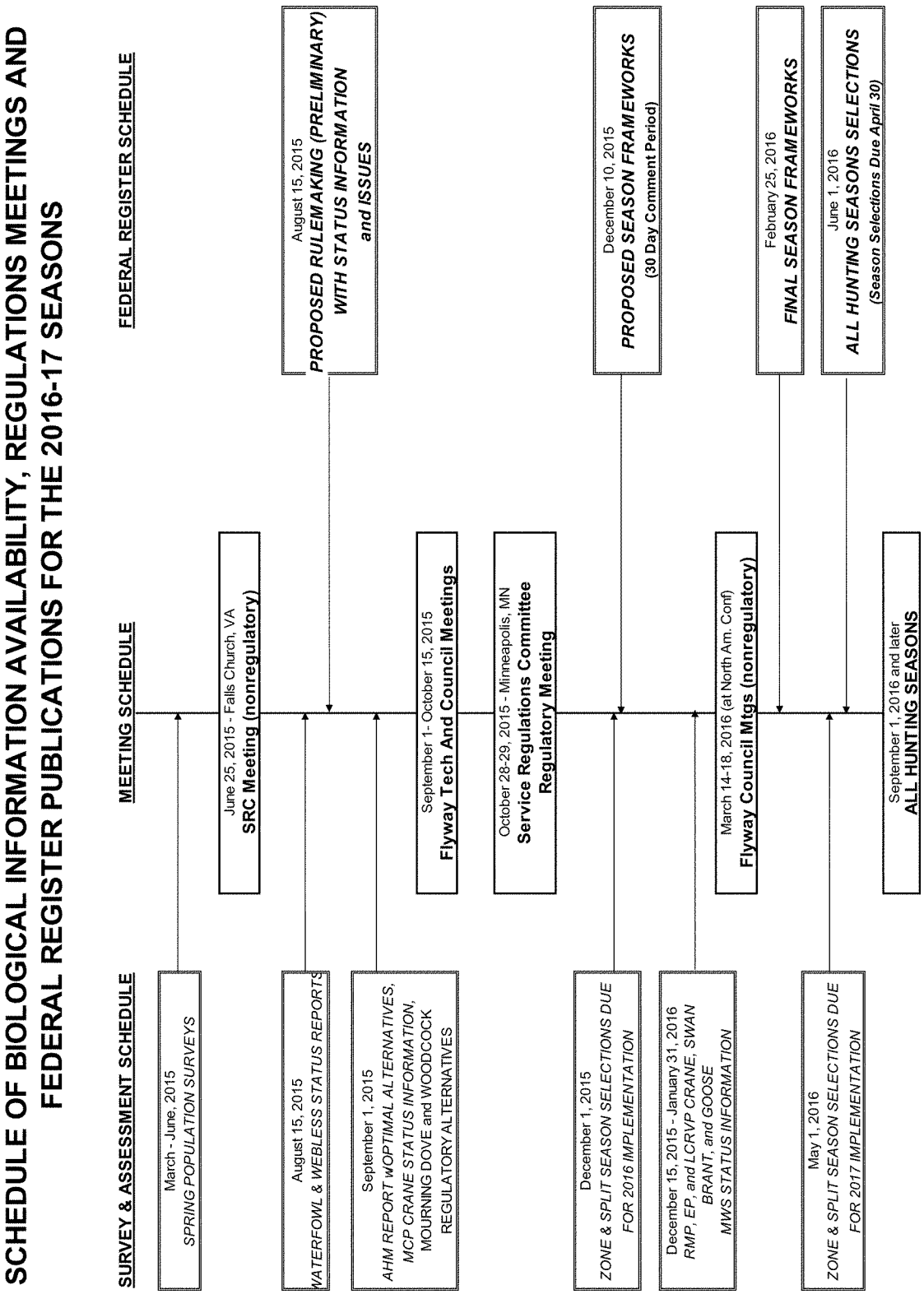
# PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2015-16 SEASON

| | ATLANTIC FLYWAY | | | MISSISSIPPI FLYWAY | | | CENTRAL FLYWAY (a) | | | PACIFIC FLYWAY (b)(c) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | RES | MOD | LIB | RES | MOD | LIB | RES | MOD | LIB | RES | MOD | LIB |
| Beginning Shooting Time | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise |
| Ending Shooting Time | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset |
| Opening Date | Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 |
| Closing Date | Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. |
| Season Length (in days) | 30 | 45 | 60 | 30 | 45 | 60 | 39 | 60 | 74 | 60 | 86 | 107 |
| Daily Bag | 3 | 6 | 6 | 3 | 6 | 6 | 3 | 6 | 6 | 4 | 7 | 7 |
| **Species/Sex Limits within the Overall Daily Bag Limit** | | | | | | | | | | | | |
| Mallard (Total/Female) | 3/1 | 4/2 | 4/2 | 2/1 | 4/1 | 4/2 | 3/1 | 5/1 | 5/2 | 3/1 | 5/2 | 7/2 |

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.




[FR Doc. 2015–08152 Filed 4–10–15; 8:45 am]
BILLING CODE 4310–55–C


# FEDERAL REGISTER

Vol. 80 Monday,
No. 70 April 13, 2015

Part IV

## The President

Proclamation 9252—National Former Prisoner of War Recognition Day, 2015

Federal Register
Vol. 80, No. 70
Monday, April 13, 2015

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9252 of April 8, 2015**

## National Former Prisoner of War Recognition Day, 2015

**By the President of the United States of America**

**A Proclamation**

For more than two centuries, courageous patriots have fought and sacrificed to secure the freedoms that define our Nation's character and shape our way of life. With honor and distinction, they have borne the burdens of defending these values, enduring tremendous hardship so that we might know a freer, safer, more peaceful world. On National Former Prisoner of War Recognition Day, we honor the women and men who traded their liberty—and sometimes their lives—to protect our own, and we acknowledge the profound debt of gratitude we owe these extraordinary members of our Armed Forces.

Thousands of American servicemen and women have experienced unimaginable trials and profound cruelty as prisoners of war. Many suffered mental and physical torture. Often they faced starvation, isolation, and the uncertainty of indefinite captivity. But even in their darkest moments, these heroes displayed courage and determination. They met immense anguish with an indomitable resolve and stood fast for the principles in which they believed. Their sacrifice represents what is best about our people and challenges us to live up to our Nation's highest ideals.

These warriors endured days, months, and sometimes years of imprisonment, missing irreplaceable milestones and simple moments at home. But they were never forgotten; they were remembered every day by loved ones. Families, friends, and communities—sustained by unyielding devotion through periods of painful unknown—never lost hope. And the United States of America remained deeply committed to our profound obligation to never leave our men and women in uniform behind.

As we reflect on the sacrifices that have made progress throughout our world possible, we are reminded of our solemn duty to serve our former prisoners of war, their families, and all our veterans as well as they served us. Today, we recommit to upholding this sacred trust, and we pay tribute to all those who have given of themselves to protect our Union.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2015, as National Former Prisoner of War Recognition Day. I call upon all Americans to observe this day of remembrance by honoring all American prisoners of war, our service members, and our veterans. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–08606
Filed 4–10–15; 11:15 am]
Billing code 3295–F5

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**Federal Register**

Vol. 80, No. 70

Monday, April 13, 2015

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## FEDERAL REGISTER PAGES AND DATE, APRIL

17307–17682 ..... 1
17683–18082 ..... 2
18083–18304 ..... 3
18305–18514 ..... 6
18515–18772 ..... 7
18773–19006 ..... 8
19007–19192 ..... 9
19193–19510 ..... 10
19511–19868 ..... 11

## CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 2 CFR

2400 ..... 18519

**Proposed Rules:**

1201 ..... 18784

### 3 CFR

**Proclamations:**

9243 ..... 18073
9244 ..... 18075
9245 ..... 18301
9246 ..... 18303
9247 ..... 18509
9248 ..... 18511
9249 ..... 18513
9250 ..... 18515
9251 ..... 19191
9252 ..... 19867

**Executive Orders:**

13694 ..... 18077

**Administrative Orders:**

Memorandums:
Memorandum of March 27, 2015 ..... 18517
Notices:
Notice of March 31, 2015 ..... 18081
Notice of April 8, 2015 ..... 19193

### 5 CFR

532 ..... 17307

**Proposed Rules:**

843 ..... 18159
2600 ..... 18160
2601 ..... 18160
2604 ..... 18160

### 7 CFR

610 ..... 19007
622 ..... 19007
624 ..... 19007
625 ..... 19007
652 ..... 19007
662 ..... 19007
953 ..... 17307
1455 ..... 19007
1465 ..... 19007

**Proposed Rules:**

1205 ..... 19567

### 10 CFR

**Proposed Rules:**

430 ..... 19569
429 ..... 17586, 17826
430 ..... 17355, 17359, 18167, 18784
431 ..... 17363, 17586, 17826

### 12 CFR

1805 ..... 19195

### 13 CFR

**Proposed Rules:**

121 ..... 18556
124 ..... 18556
125 ..... 18556
126 ..... 18556
127 ..... 18556
130 ..... 17708
134 ..... 18556

### 14 CFR

23 ..... 17310, 17312
25 ..... 18305
39 ..... 18083, 19009, 19013, 19017
73 ..... 18519
95 ..... 18084
97 ..... 19511, 19515, 19517, 19520
1245 ..... 19196

**Proposed Rules:**

39 ..... 17366, 17368, 19244, 19246, 19248, 19570, 19572, 19574
93 ..... 19576
97 ..... 19577
121 ..... 19251
193 ..... 18168

### 15 CFR

774 ..... 18522

### 16 CFR

**Proposed Rules:**

1422 ..... 18556
1610 ..... 18795

### 17 CFR

**Proposed Rules:**

240 ..... 18036

### 18 CFR

11 ..... 18526
35 ..... 17654

### 20 CFR

404 ..... 19522
416 ..... 19522

### 21 CFR

1 ..... 18087
14 ..... 18307
26 ..... 18087
99 ..... 18087
201 ..... 18087
203 ..... 18087
206 ..... 18087
207 ..... 18087
310 ..... 18087
312 ..... 18087
314 ..... 18087
510 ..... 18773

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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