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Contents

Federal Register

Vol. 81, No. 239

Tuesday, December 13, 2016

Agricultural Marketing Service
PROPOSED RULES
Provisions for Removing Commodity Research and Promotion Board Members and Staff, 89878

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service

Antitrust Division
NOTICES
Membership Changes under National Cooperative Research and Production Act:
Medical CBRN Defense Consortium, 89978–89979
National Armaments Consortium, 89992
Pistoia Alliance, Inc., 89992
SGIP 2.0, Inc., 89991–89992
Southwest Research Institute: Cooperative Research Group on Advanced Engine Fluids, 89991
Southwest Research Institute: Cooperative Research Group on Automotive Consortium for Embedded Security, 89977–89978
TeleManagement Forum, 89978
Proposed Final Judgments and Competitive Impact Statements:
United States v. Alaska Air Group, Inc., et al., 89979–89991

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Survey of Entrepreneurs, 89892–89895

Coast Guard
RULES
Drawbridge Operations:
Columbia River, Kennewick, WA, 89862
Willamette River, Portland, OR, 89861–89862
Safety Zones:
James River, Newport News, VA, 89865–89867
United Illuminating Co. Housatonic River Crossing Project; Housatonic River, Milford and Stratford, CT, 89862–89865

Commerce Department
See Census Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
PROPOSED RULES
Safety Standard for Portable Generators, 89888

Copyright Royalty Board
RULES
Recordkeeping for Use of Sound Recordings under Statutory License; Technical Amendment, 89867–89868

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
International Early Learning Study 2018 Field Test Recruitment, 89923
Applications for New Awards:
Magnet Schools Assistance Program, 89911–89920
Tests Determined to be Suitable for Use in National Reporting System for Adult Education, 89920–89922

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Programs:
Energy Conservation Standards for Residential Dishwashers, 90072–90120

Environmental Protection Agency
RULES
Air Quality Designations:
2010 Sulfur Dioxide (SO2) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 89870–89876
Air Quality State Implementation Plans; Approvals and Promulgations:
Pennsylvania; Delaware County Nonattainment Area; Attainment of 2012 Annual Fine Particulate Matter Standard, 89868–89870
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Pennsylvania; Delaware County Nonattainment Area; Attainment of 2012 Annual Fine Particulate Matter Standard, 89889–89890
NOTICES
Pesticide Product Registrations:
Applications for New Active Ingredients, 89933–89935
Public Water Supply Supervision Program:
Program Revision for State of Oregon, 89929
Receipt of Information under Toxic Substances Control Act, 89930
State Program Requirements under Clean Water Act:
Michigan's Section 404 Program, Revisions; Approval, 89930–89933

Federal Aviation Administration
RULES
Operational Requirements for Use of Enhanced Flight Vision Systems; Pilot Compartment View Requirements for Vision Systems, 90126–90177
Special Conditions
DAHER–SOCATA, Model TBM 700; Inflatable Four-Point Restraint Safety Belt with Integrated Airbag Device, 89843–89846
PROPOSED RULES
Airworthiness Directives:
BAE Systems (Operations) Limited Airplanes, 89878–89881
Bombardier, Inc. Airplanes, 89881–89885

Amendment of Class D and Class E Airspace:
Elmira, NY, 89885–89887
NOTICES
Aeronautical Land-Use Assurances; Waivers:
Bowman Municipal Airport, BPP, Bowman, ND, 90043–90044
Airport Privatization Pilot Program:
Preliminary Application for Westchester County Airport, White Plains, NY, 90044–90045
Meetings:
Twenty Seventh RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary, 90042–90043
Twenty Sixth Radio Technical Commission for Aeronautics SC–214 Standards for Air Traffic Data Communications Services Plenary, 90043
Petitions for Exemption; Summaries:
Drone Seed, Co., 90045

Federal Communications Commission
PROPOSED RULES
Petitions for Partial Reconsideration of Action in Rulemaking Proceeding, 89890
Radio Broadcasting Services:
Pima, AZ; Dismissal, 89890–89891
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 89938–89940
Broadcast Television Spectrum Incentive Auctions:
Stage 4 Clearing Target of 84 Megahertz and Reverse Auction, 89935–89938

Federal Deposit Insurance Corporation
NOTICES
Charter Renewals:
Advisory Committee on Economic Inclusion, 89940

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 89940

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 89923–89926, 89928–89929
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
BREG Aggregator, LLC, 89929
Meetings; Sunshine Act, 89926–89928

Federal Highway Administration
PROPOSED RULES
National Standards for Traffic Control Devices:
Manual on Uniform Traffic Control Devices for Streets and Highways, 89888–89889
NOTICES
Buy American Waivers, 90045–90046

Federal Maritime Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 89940–89941

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications:
Diabetes Mellitus, 90054–90060
Vision, 90046–90054

Federal Reserve System
NOTICES
Requests for Comments:
Application of RFI/C(D) Rating System to Savings and Loan Holding Companies, 89941–89943

Federal Trade Commission
NOTICES
Early Terminations of Waiting Periods under Premerger Notification Rules, 89943–89946
Enforcement Policy Statement on Marketing Claims for Over-the-Counter Homeopathic Drugs, 90122–90123

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Renewing an Expired Golden-Cheeked Warbler Incidental Take Permit in Travis County, TX, 89970–89971

Food and Drug Administration
RULES
Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs Regulated under Biologics License Application, and Animal Drugs, 89848–89849
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Animal Feed Regulatory Program Standards, 89947–89949
Donor Risk Assessment Questionnaire for Food and Drug Administration/National Heart, Lung, and Blood Institute-Sponsored Transfusion-Transmissible Infections Monitoring System—Risk Factor Elicitation, 89949–89950
Determinations of Regulatory Review Periods for Purposes of Patent Extensions:
NUCALA, 89946–89947
Guidance:
Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishment, 89950–89951

Food and Nutrition Service
RULES
Supplemental Nutrition Assistance Program:
Photo Electronic Benefit Transfer Card Implementation Requirements, 89831–89843

Forest Service
NOTICES
New Fee Sites:
Manti-La Sal National Forest, 89892

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 89952

Homeland Security Department
See Coast Guard
See Transportation Security Administration
NOTICES
Privacy Act; Systems of Records, 89957–89963

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Implementation of Housing for Older Persons Act of 1995, 89964–89965
Funding Awards:
Fair Housing Initiatives Program Fiscal Year 2016, 89965–89970

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
RULES
Treatment of Certain Domestic Entities Disregarded as Separate from Their Owners as Corporations for Purposes of Section 6038A, 89849–89852

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Chlorinated Isocyanurates from People's Republic of China; Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent to Rescind Review, in Part; 2014, 89896–89897
Drawn Stainless Steel Sinks from People's Republic of China; Partial Rescission of Antidumping Duty Administrative Review; 2015–2016, 89895–89896
Potassium Permanganate from People's Republic of China; Preliminary Results of 2015 Antidumping Duty Administrative Review, 89897–89899

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor, 89977

Judicial Conference of the United States
NOTICES
Hearings:
Advisory Committee on Federal Rules of Criminal Procedure; Cancellation, 89977

Justice Department
See Antitrust Division
NOTICES
Consent Decrees under CERCLA, 89992–89993

Labor Department
NOTICES
Meetings:
Advisory Committee on Veterans' Employment, Training and Employer Outreach, 89993

Land Management Bureau
NOTICES
Plats of Surveys:
Colorado, 89971

Library of Congress
See Copyright Royalty Board

Maritime Administration
NOTICES
Waiver Requests for Aquaculture Support Operations for 2017 Calendar Year:
Vessels COLBY PERCE and RONJA CARRIER, 90060–90061

National Institute of Standards and Technology
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Building for Environmental and Economic Sustainability Please, 89899–89900

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
CTEP Support Contracts Forms and Surveys, National Cancer Institute, 89955–89957
Generic Clearance for Collection of Qualitative Feedback on Agency Service Delivery, National Cancer Institute, 89954–89955
Meetings:
National Advisory Child Health and Human Development Council, 89952–89953
National Advisory General Medical Sciences Council, 89954
National Cancer Institute, 89953–89954
National Institute on Aging, 89953–89954

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Re-opening of Commercial Sector for South Atlantic Vermilion Snapper, 89876–89877
PROPOSED RULES
Puerto Rico Coastal Zone Management Program, 89887–89888
NOTICES
Environmental Impact Statements; Availability, etc.:
Kalamazoo River Natural Resources Damage Assessment, 89900
Fisheries of the Exclusive Economic Zone Off Alaska:
North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Programs, 89900–89903
North Pacific Observer Program Standard Ex-Vessel Prices, 89904–89911

Nuclear Regulatory Commission
NOTICES
Combined License; Applications:
Florida Power and Light Co.; Turkey Point, Units 6 and 7, 89995–89997
Meetings:
Advisory Committee on Reactor Safeguards Subcommittee on Metallurgy and Reactor Fuels, 89994–89995
Advisory Committee on Reactor Safeguards Subcommittee on Reliability and PRA, 89994–89995
Meetings; Sunshine Act, 89994

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Presidential Management Fellows Application, 89997

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous Materials:
Use of DOT Specification 39 Cylinders for Liquefied Flammable Compressed Gas, 90061–90062
Pipeline Safety:
High Consequence Area Identification Methods for Gas Transmission Pipelines, 90062–90064

Postal Regulatory Commission
NOTICES
Market Dominant Price Adjustments, 89997–89998

Presidential Documents
EXECUTIVE ORDERS
Child Support and Other Forms of Family Maintenance, Hague Convention on the International Recovery of; Implementation Efforts (EO 13752), 90179–90182
ADMINISTRATIVE ORDERS
Syria; Arms Export Control Act Waiver to Support U.S. Special Operations to Combat Terrorism (Presidential Determination No. 2017–05 of December 8, 2016), 90183–90184

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 89998–89999

Reclamation Bureau
NOTICES
Prize Competitions; Requirements and Registrations:
Arsenic Sensor Challenge—Stage 1, 89971–89974
More Water Less Concentrate—Stage 1, 89974–89977

Securities and Exchange Commission
NOTICES
Applications:
Fidus Investment Corp., et al., 90026–90030
Goldman Sachs BDC, Inc., et al., 90021–90025
Stifel, Nicolaus and Co, Inc., et al., 89999–90001
Meetings; Sunshine Act, 90038–90039
Self–Regulatory Organizations; Proposed Rule Changes:
Bats BZX Exchange, Inc., 90015–90019
Bats EDGX Exchange, Inc., 90009–90012
Chicago Board Options Exchange, Inc., 90012–90015
Fixed Income Clearing Corp., 90001–90009
Investors Exchange, LLC, 90035–90038
Miami International Securities Exchange, LLC, 90030–90033
NASDAQ Stock Market, LLC, 90021
New York Stock Exchange, LLC, 90019–90020
NYSE Arca, Inc., 90026, 90033–90035

State Department
NOTICES
Requests for Information:
2017 Trafficking in Persons Report, 90039–90042

Trade Representative, Office of United States
RULES
Production or Disclosure of Records, Information and Employee Testimony in Legal Proceedings, 89846–89848

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Funding Availabilities:
Small Business Transportation Resource Center Program, 90064–90069

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Canine Training Center Adoption Application, 89963–89964

Treasury Department
See Internal Revenue Service
RULES
Nondiscrimination on Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from Department of Treasury, 89852–89861

Veterans Affairs Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Replacement Veterans Affairs Medical Center, Louisville, KY; Comment Period Extension, 90069–90070

Separate Parts In This Issue

Part II
Energy Department, 90072–90120

Part III
Federal Trade Commission, 90122–90123

Part IV
Transportation Department, Federal Aviation Administration, 90126–90177

Part V
Presidential Documents, 90179–90184

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:
13752.....90181

Administrative Orders:
Presidential Determinations:
Presidential Determination 2017–05 of December 8, 2016 90183

7 CFR
271.....89831
272.....89831
273.....89831
274.....89831
278.....89831

Proposed Rules:
1150.....89878
1160.....89878
1205.....89878
1206.....89878
1207.....89878
1208.....89878
1209.....89878
1210.....89878
1212.....89878
1214.....89878
1215.....89878
1216.....89878
1217.....89878
1218.....89878
1219.....89878
1222.....89878
1230.....89878
1250.....89878
1260.....89878

10 CFR
429.....90072
430.....90072

14 CFR
1.....90126
23 (2 documents) 89843, 90126
25.....90126
27.....90126
29.....90126
61.....90126
91.....90126
121.....90126
125.....90126
135.....90126

Proposed Rules:
39 (2 documents) 89878, 89881
71.....89885

15 CFR
2004.....89846

Proposed Rules:
923.....89887

16 CFR

Proposed Rules:
1241.....89888

21 CFR
20.....89848
201.....89848
207.....89848
314.....89848
514.....89848
515.....89848
601.....89848
607.....89848
1271.....89848

23 CFR

Proposed Rules:
655.....89888

26 CFR
1.....89849
301.....89849

31 CFR
22.....89852

33 CFR
117 (2 documents) 89861, 89862
165 (2 documents) 89862, 89865

37 CFR
370.....89867

40 CFR
52.....89868
81.....89870

Proposed Rules:
52.....89889

47 CFR

Proposed Rules:
2.....89890
73.....89890
90.....89890

50 CFR
622.....89876

Rules and Regulations

Federal Register
Vol. 81, No. 239
Tuesday, December 13, 2016

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, and 278

[FNS–2016–0003]

RIN 0584–AE45

Supplemental Nutrition Assistance Program: Photo Electronic Benefit Transfer (EBT) Card Implementation Requirements

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

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is updating the Supplemental Nutrition Assistance Program (SNAP or ''Program'') regulations to set implementation parameters, prerequisites and operational standards required of State agencies that intend to implement the photo Electronic Benefit Transfer (EBT) card option provided under Section 7(h)(9) of the Food and Nutrition Act of 2008 (''the Act''). The updated regulations establish procedures to ensure State implementation is consistent with all Federal requirements as they relate to photo EBT cards, including establishing procedures to ensure: Any other appropriate member of the household or authorized representative (including any individual permitted by the household to purchase food on its behalf) who is not pictured on the photo EBT card may use the card; placing photos on EBT cards does not affect the eligibility process and does not impose additional conditions of eligibility or adversely impact the ability of appropriate household members to access the nutrition assistance they need. Failure by a State agency to adhere to the provisions of this rule may result in penalties, including loss of federal funding. The rule will also codify several other program updates to reflect the current operations of the program.

DATES: This rule is effective January 12, 2017.

FOR FURTHER INFORMATION CONTACT: Vicky T. Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Ms. Robinson can also be reached by telephone at 703–305–2476 or by email at *Vicky.Robinson@fns.usda.gov* during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

This rule finalizes the provisions of a proposed rule published on January 6, 2016 (81 FR 398). With this final rule, FNS is amending the SNAP regulations at 7 CFR parts 271, 272, 273, 274 and 278 to codify and expand guidance that was issued December 29, 2014, requiring State agencies that intend to implement the photo EBT card option under Section 7(h)(9) of the Act, 7 U.S.C. 2016(h)(9), to submit a comprehensive Implementation Plan that addresses certain operational issues to ensure State implementation is consistent with all Federal requirements and that program access is protected for participating households.

In particular, this rule clarifies that the State option to place a photograph on an EBT card is a function of issuance. Pursuant to this, State agencies are prohibited from having photo EBT card requirements that affect the household's eligibility or the certification process. Moreover, this rule clarifies the right of all household members and any other individual permitted by the household to use the EBT card to purchase food or meals on behalf of the household, regardless of whether their photo is on the card, and further defines the responsibility of State agencies to ensure that retailers understand photo EBT requirements when processing transactions involving SNAP.

Summary of the Major Provisions

The final rule removes the provision concerning multiple card usage at the point of sale and incorporates the following minor modifications for clarity:

- Language added to clarify that States must issue both the benefits and EBT card without delay in accordance with SNAP application processing standards, whether or not a photo is on the card.
- Language added to clarify that expedited households are exempt from a mandatory photo EBT card policy until the next recertification.
- Language added to clarify that States may not charge households card replacement fees for any card issued as part of the implementation of the photo EBT card option.
- Language added to clarify that households have the right to permit other individuals to use the household's EBT card on an ad hoc basis for the purpose of attaining assistance with purchasing food, whether or not the State has a photo EBT requirement.
- Language added to specify that Implementation Plans must also include the text that will be added to EBT cards to state that anyone with a valid PIN may use the card even if he/she is not pictured on the card; the procedures for opting into a voluntary photo EBT card policy and documenting that a household voluntarily chose to have a photo on its EBT; and communication plans for educating and notifying clients and retailers of the State's photo EBT card policy.
- Language added to clarify that State agencies shall provide FNS additional information upon request or as may be required by other guidelines established by the Secretary to conduct ongoing evaluations.
- Clarified in preamble that State responsibilities for retailer education on photo EBT cards is limited to the implementation phase. For newly authorized retailers, FNS will update retailer training materials as the agency would for any new requirements affecting SNAP retailer operations.
- Removal of the provision requiring SNAP retailers to ask for identification from SNAP customers using three or more EBT cards at once for purchases and to report that information to the USDA Office of Inspector General (OIG) Fraud Hotline if fraud is suspected.

II. Background

The Act and SNAP regulations give states the option to require that EBT cards contain a photo of one or more

household members. However, implementation involves complex legal, operational, and civil rights considerations; if not well planned, it can inhibit benefit access for eligible participants which could violate federal law.

There have been significant issues with recent attempts to place photos on EBT cards, including confusion at stores where clients have been turned away because of misunderstanding/misapplication of policy; confusion among clients regarding who can use the card in the household because of the photo on the card; and confusion among State workers regarding proper policy for certain cases such as child only cases. As a result, FNS issued guidance to State agencies in December 2014 to provide clear parameters for implementation and ongoing operation of the photo EBT card option. On January 6, 2016, FNS published a proposed rule in the **Federal Register** (81 FR 398), in which the Agency proposed to amend SNAP regulations at 7 CFR parts 271, 272, 273, 274 and 278 to codify the FNS guidance.

The rule proposed that States submit a comprehensive Implementation Plan to FNS for approval prior to implementing the photo EBT card option, and that the Implementation Plan include certain operational components to ensure State implementation is consistent with all Federal requirements and that program access is not inhibited. Because implementation of the photo EBT card option requires substantial resources, FNS proposed that State agencies also demonstrate that they meet minimum performance standards so FNS could evaluate whether SNAP households receive timely, accurate, and fair service before the State could implement the photo EBT card option. The rule also proposed to clarify that the State option to place photos on EBT cards is a function of issuance and not a condition of eligibility. In addition, the proposed rule included point-of-sale verification provisions to address recently identified violations by retailers and others buying and using multiple cards and Personal Identification Numbers (PINs) to stock their shelves.

FNS solicited comments on the proposed rule for 60 days, ending March 7, 2016. The Agency received 84 comments from various entities, including: 56 advocacy organizations; 11 individuals that identified as SNAP participants; 8 individuals that did not identify with a State agency or organization; 4 grocer associations; 3 State/local government agencies; and 2 Electronic Funds Transfer (EFT) organizations.

III. Summary of Comments and Explanation of Revisions

The comments FNS received were overwhelmingly supportive of the proposed rule, in general, and, in particular, of the recognition that photo EBT is a function of issuance that cannot impact households' SNAP eligibility. With regards to the photo EBT card implementation and monitoring provisions in the proposed rule, respondents expressed appreciation for the effort taken by FNS to protect SNAP participants' access to benefits, to prevent challenges in photo EBT implementation in the future, and to ensure that Federal reimbursement dollars are not wasted in the administrative costs of implementing a complex State option. Many respondents provided suggestions for strengthening client protections even further and for imposing stricter requirements on State agencies wishing to implement the photo EBT card option, such as requiring additional client exemptions from the photo, establishing a specific level for each performance metric that reflects a State's commitment and ability to provide timely assistance to eligible households, establishing clearer requirements for client and retailer education, and requiring the State agency to seek input from key stakeholders prior to and after implementation.

At the same time, some of the respondents supporting the rule expressed opposition to the general principle of placing photos on EBT cards because they believe it stigmatizes people receiving government assistance, subjects them to unequal and greater scrutiny by store clerks, wastes taxpayer dollars, and is at odds with the rules of the commercial payments world, which EBT is intended to follow. Some respondents also felt that allowing States to withhold benefits is inconsistent with the statutory intent that photo EBT cards are a function of issuance, not certification.

Four respondents expressed overall opposition to the rule, believing that the rule both in form and in effect restricts States' ability to exercise the photo EBT card option and supported, instead, requiring mandatory placement of photos on EBT cards and/or not restricting States' ability to do so. Furthermore, several other respondents expressed significant concerns with the proposed verification and reporting requirements of retailers for customers paying with multiple EBT cards at the point-of-sale.

Because of the strong support for the rule and based on FNS' authority under Section 11 of the Act for monitoring and oversight of SNAP, FNS is largely adopting the proposed rule as a final rule, with some clarifying changes regarding the photo EBT card provisions in response to comments. Also, in response to comments, FNS is eliminating the verification requirement with respect to multiple card usage at the point-of-sale. Below is further discussion of the most illustrative comments FNS received.

State Agency Requirements for Photo EBT Card Implementation

Minimum requirements—Several respondents, which included nine advocates and seven clients, requested that FNS not allow a State to commence with photo EBT plans if they cannot process household applications and issue benefits on time. The proposed rule specified that, prior to implementation, State agencies must demonstrate successful administration of SNAP based on SNAP performance standards, including application processing timeliness for both the 7-day expedited processing and the 30-day processing standards. Pursuant to the proposed provision at 7 CFR 274.8(f)(1), which remains unchanged in the final rule, States must demonstrate to FNS successful administration of SNAP based on SNAP performance standards to be eligible to implement the photo EBT card option, including successfully processing household benefits within the required timeframes.

Nine advocacy organizations also wanted FNS to establish specific benchmarks for the performance metrics States must meet in order to implement the photo EBT card option. The respondents suggested it is critical that there be a specific performance level that must be established and maintained for each metric, one that reflects a State's commitment to providing timely assistance to eligible households, and its ability to do so. Respondents also wanted FNS to clarify that the performance metrics will be based on performance and not on improvement in order to best protect SNAP applicants and participants. One respondent suggested that the final rule should require positive performance in each of the three years preceding approval and implementation of the photo EBT system.

While FNS understands advocates' desire for specific thresholds with the intent of being able to readily exclude poor performing States from being

allowed to implement the photo EBT card option, FNS has come to the conclusion that such a narrowly defined approach could unduly limit FNS' ability to evaluate a State's overall capacity for properly implementing the photo EBT card option. Instead, FNS believes that assessing the State's overall program performance would result in a more effective and accurate determination of a State's capability to implement a photo EBT card option with minimal adverse impacts to clients. The overall picture would, of course, take into account individual measurements, such as those already established through current FNS policy and the Quality Control (QC) process. The Agency will use many of these same standards, as specified at 7 CFR 274.8(f)(1), to measure State performance levels for the purpose of approving photo EBT card implementation. However, it's possible a State could be meeting such standards and still be performing poorly overall or in other areas not included in current standard measurements. For this reason, it is important for FNS to maintain some flexibility to be able to address situations in which unforeseen performance issues would inhibit proper photo EBT card implementation.

The final rule at 7 CFR 274.8(f)(1) remains unchanged.

Voluntary program—Four advocacy organizations wanted FNS to require States to memorialize any agreement to ''opt-in'' to a voluntary photo EBT card policy with written documentation signed by the household that makes clear that it understood it had a choice and decided to opt-in. The provisions at 7 CFR 274.8(f)(14)(iii) list general types of information FNS expects in the Implementation Plans, including a description of the card issuance procedures and how the State will obtain photographs. Although FNS is not specifying in regulations how State agencies must meet the requirement to have households opt in rather than opt out of a voluntary photo EBT card policy, FNS is adding, in response to comments, language in 7 CFR 274.8(f)(14)(iii) to require that the Implementation Plan include a description of the proposed procedures for opting into a voluntary photo EBT card policy and documenting that a household voluntarily chose to have a photo on its EBT card. Specifically, States will need to show how the opt-in process will protect clients' right to not have a photo on the card in voluntary programs. 7 CFR 274.8(f)(14)(iii) is changed accordingly.

Serving clients with hardship—Several respondents, including 26 advocacy organizations and 8 clients, wanted FNS to expand the minimum required exemption criteria for mandatory photo EBT programs in the proposed 7 CFR 274.8(f)(4). In particular, many respondents wanted FNS to mandate hardship and ''good cause'' exemptions to address applicants residing in rural areas, applicants that have a hardship that makes it difficult for them to travel to have their photo taken for the card, applicants with caregiving duties, as well as veterans, applicants with refugee or asylee status and those who face low-literacy barriers. Based on the experiences of the other States with existing photo EBT policies, FNS determined that there is sufficient basis to mandate exemptions for the most vulnerable populations. However, with respect to more general hardship or ''good cause'' exemptions, FNS has decided to remain consistent with mandatory exemptions required for other areas of the Program. For hardship cases that are not already exempt under State policy, FNS is clarifying at 7 CFR 274.8(f)(5) that State agencies must have a process in place to address such situations on a case-by-case basis. Therefore, in the final rule, FNS is maintaining States' discretion to establish their own hardship exemptions beyond the minimum required exemptions for a mandatory photo EBT program based on State-specific needs and 7 CFR 274.8(f)(4) is adopted as is.

Issuance of the photo EBT card—One advocacy organization wanted FNS to specify that if a household meets expedited criteria, a ''photo-less'' card must be issued to the entire household without delay. FNS agrees that the proposed language at 7 CFR 274.8(f)(6) does not sufficiently reflect the preamble language to make expedited households exempt from mandatory photo EBT card policies until the next recertification. In other words, States must not issue a photo EBT card to expedited households even if they can do so within 7 days. Therefore, FNS is revising the regulatory language at 7 CFR 274.8(f)(6)(ii) to clarify that States must issue without delay benefits and a card without the photo to households that meet expedited criteria. A nonexempt household member may be required to comply at the next recertification.

One advocacy organization wanted FNS to clarify that States must issue both the benefits and card without delay for expedited households. In line with SNAP regulations at 7 CFR 274.2(b), benefits are not considered available until the State provides the household with an active EBT card and PIN, and benefits have been posted to the household's EBT account and are available for spending. Accordingly, FNS is adding clarifying language at 7 CFR 274.8(f)(6)(iii).

Card replacement fees—Five advocates suggested FNS clarify that State agencies may not charge households a replacement card fee when replacing non-photo EBT cards with photo EBT cards during implementation or for putting additional text on the card related to the use of photo EBT cards. State agencies are currently permitted to charge card replacement fees when a card has been lost, stolen, or damaged and the requirements of 7 CFR 274.6(b) have been met. The issuance of a photo EBT card is not a replacement of a lost, stolen or damaged card, so replacement fees would not apply. However, FNS will clarify in 7 CFR 274.8(f)(6)(vi) that States are prohibited from counting any card issued as part of the implementation of the photo EBT card option against the household with respect to both the card replacement threshold and replacement fees under 7 CFR 274.6(b).

Prorating household benefits—Four advocacy organizations and one individual viewed withholding benefits for noncompliance with a photo EBT card requirement as a violation of the Act since photo EBT cards are a function of issuance, not certification, and, therefore, should not be allowed. One State agency viewed the proration and withholding requirement for mandatory photo EBT cards unduly burdensome, making it impractical to compel compliance. The Act clearly provides States with the option to mandate a photo on EBT cards. FNS has determined that States may enforce a mandatory policy by withholding issuance of the non-complying household member share of benefits only, but not by denying certification or withholding benefits for the entire household.

Household compliance—Sixteen respondents, including advocacy organizations and clients, expressed concern that households be given sufficient time to comply with a photo EBT card requirement. Respondents suggested that FNS consider applying a standard for missed photo appointments similar to the regulatory requirements at 7 CFR 273.2(h)(1)(i)(D), relating to missed interviews, to households that do not comply with the first appointment to get their photograph taken. FNS does not believe that the requirements surrounding missed eligibility interviews are appropriate for

the purposes of allowing clients sufficient time to obtain a photo for the EBT card because those requirements do not provide the flexibility that must be part of a State's photo EBT card policy. States must describe the process for obtaining the photos in the Implementation Plan. The language in 7 CFR 274.8(f)(6)(i) requires that the time provided to households to come in to take a photo be sufficient and reasonable, and also specifies that obtaining the photo must not impact processing standards at 7 CFR 273.2(g) and (i). The process should be flexible with multiple opportunities for providing a photo, such as allowing clients to come in on a drop-in basis. If the non-exempt, non-compliant household member does not provide a photo within 30 days of applying, the State must still issue the EBT card and provide a pro-rated amount of benefits for the other exempt, or compliant household members as provided in 7 CFR 274.8(f)(7). When the non-exempt household member comes into compliance with the photo requirement, the household gets the remaining benefits back for all previous months as provided in 7 CFR 274.8(f)(8). As mentioned, expedited households are exempt from the photo EBT card policy until the next recertification. As stated in 7 CFR 274.8(f)(8), withheld benefits are expunged after one year in accordance with 7 CFR 274.2(h)(2). With one year to come into compliance, FNS believes the proposed regulations already protect households from being negatively impacted if circumstances delay the head of household's ability to provide a photo. It is also important to highlight that this only applies to mandatory implementation as voluntary participants cannot be required to be photographed under any circumstance. 7 CFR 274.8(f)(6) remains unchanged with respect to providing households sufficient time to comply with a photo EBT card requirement.

Expungement—One advocacy organization wanted FNS to exempt benefits withheld for noncompliance from expungement until the household becomes compliant. Because it is possible that some households may never come into compliance, FNS does not believe it is practical to require States to hold the benefits and maintain them as a SNAP obligation in perpetuity. FNS continues to believe that one year is sufficient time for the household to come into compliance before the State can start expunging withheld benefits. Furthermore, all withheld benefits cannot be expunged at once. Benefits must be expunged at the allotment level just as they are under the regular expungement process at 7 CFR 274.2(h)(2). Similarly, the noncompliant household member continues to accrue withheld benefits for as long as they are certified. For example, if a certified member of a household does not comply with a mandatory photo policy for 14 months and then becomes compliant, the State must return 12 months of benefits to that household. In other words, when a noncompliant member of a household becomes compliant, that household is entitled to all the benefits withheld in accordance with 7 CFR 274.8(f)(7), up to a maximum of 12 months' worth of benefits.

Therefore, the final rule at 7 CFR 274.8(f)(8) remains unchanged to ensure benefits withheld for noncompliance are treated in accordance with the same timeframe used for handling all expungements under 7 CFR 274.2(h)(2). If the noncompliant member comes into compliance, the non-expired benefits must be issued within two business days of when the client has their photo taken by the State agency. Any action to withhold benefits from issuance is subject to fair hearings in accordance with 7 CFR 273.15.

Household and authorized representative card usage—Two advocacy organizations would like the regulations to be more explicit in giving households the right to permit individuals on an ad hoc basis to use the household's EBT card on the household's behalf to purchase food or meals, whether or not their State has a photo EBT policy. While 7 CFR 273.2(n)(3) and 274.7(a) already allow households to select other persons to use their Program benefits to purchase eligible food, FNS agrees that making this ability more explicit in the photo EBT card regulations would be helpful in ensuring that States do not attempt to place undue burdens on households by requiring a formal authorization process to identify individuals who may help the household purchase food. Current regulations allow any household member or non-member selected by the household to purchase food with the household's EBT card on the household's behalf. These non-members are not required to be formally designated and States shall not require households to provide the State information regarding individuals making purchases permitted by the household on an adhoc basis.

However, clients also need to understand that neither the State nor FNS is responsible for any benefits lost as a result of a client freely giving out the household's PIN to another individual. Therefore, FNS is amending language at 7 CFR 274.8(f)(9) through (11) to similarly specify that individuals permitted by the household to purchase food or meals on their behalf are entitled to use the card.

As it continues to be illegal for anyone to sell, transfer, acquire, receive or possess program benefits for the purpose of defrauding the government or individuals certified to receive benefits, clients are not allowed to give their EBT card and/or PIN to another individual for any other purpose other than to purchase food or meals for the certified household only.

Client and retailer training—Several respondents, including 10 clients, six advocacy organizations and one State agency wanted to ensure that client and retailer training and education materials be written in clear and conspicuous language, with some respondents specifying font, type and reading level. Some respondents also wanted information regarding exemptions, benefits being prorated, the ability for anyone in the household to use the card, etc., added to the minimum information specified in the proposed rule. While FNS shares the respondents' concerns that clients and retailers receive all the necessary information to ensure compliance with SNAP regulations, FNS does not believe such specificity is necessary. Too much information can have the unintended consequence of overwhelming the recipient with the information, hindering both accessibility and understanding of the information. Instead, FNS will assess the clarity in wording and appearance of photo EBT card training and education materials during the overall implementation approval process. Therefore, FNS is leaving the information required for client and retailer training and education materials unchanged in the final rule at 7 CFR 274.8(f)(10) and (11).

Retailer education and responsibilities—Two advocacy organizations and two State agencies opposed the provisions in the proposed rule that would shift responsibility for retailer education and accountability from FNS to the States. They were concerned that the resources and time necessary to perform retailer outreach effectively is beyond the capacity of many State agencies, which already confront limited resources. While it is true that FNS oversees retailer policy and compliance, States implement the photo EBT process at their own option. The Act clearly requires States that choose to do so to be responsible for ensuring that any other appropriate member of the household or authorized

representative of the household may utilize the card, which includes ensuring that the State photo EBT policy is understood by all stakeholders. Furthermore, States have been directly involved with retailer participation with respect to equipping retailers with point-of-sale devices, training them on EBT requirements and procedures, and providing customer service on EBT. Therefore, having States be responsible for retailer education with respect to the photo EBT cards is not inconsistent with past or current retailer involvement at the State level and fulfills the Act's requirement.

Three advocacy organizations wanted FNS to specify that States must educate not only current retailers but any new retailers that come into the Program, while respondents, in general, recommended that FNS incorporate guidance on the proper handling and acceptance of photo EBT cards into the initial training materials for newly authorized stores and any refresher training produced for stores. Because of the divergent comments regarding whether or not States should be given retailer education responsibilities, FNS is limiting State responsibilities regarding retailer education responsibilities on photo EBT cards to the implementation phase. For newly authorized retailers, FNS will maintain its current retailer education responsibilities, including updating retailer training materials as the Agency would for any new requirements affecting SNAP retailer operations. As a result, the proposed retailer education and responsibility provisions remain unchanged in the final rule at 7 CFR 274.8(f)(11).

Implementation Plan

There were several areas where respondents recommended stricter parameters and/or additional or more specific requirements. In many of these instances, FNS believes States should continue to be allowed some discretion, consistent with other areas of the Program. Furthermore, many of the comments involved general concerns with ensuring States make it clear how they would implement certain aspects of the photo EBT card option, as well as make the policies clear to clients. To that end, FNS is specifically including communication plans for educating and notifying clients and retailers to the language at 7 CFR 274.8(f)(14)(iii).

Ultimately, FNS does not believe it would be beneficial to be too specific with regard to each requirement that is included in the Implementation Plan. Comments received on the Implementation Plan provisions at 7 CFR 274.8(f)(14) are summarized as follows:

Demonstrate a genuine problem that will be rectified by the photo on the EBT card—Six advocacy organizations wanted States to be required to prove the cost effectiveness and efficiency of a photo EBT program, and/or demonstrate that the photo EBT policy will remedy a specific problem. FNS believes such a showing is not required and is unduly burdensome on a State.

Stakeholder input—Ten advocacy organizations and one grocer association wanted FNS to require States to seek and include feedback from other stakeholders, such as anti-hunger, client, or related advocacy groups, EBT vendors, and grocer associations, in the Implementation Plan. FNS agrees that it would benefit States to obtain input from organizations that might have further insight into on-the-ground operations and would highly encourage it. While States are not required to collaborate prior to or after implementation of a regulatory requirement, FNS believes obtaining feedback from stakeholder organizations and/or including them in the State's efforts to communicate effectively with clients and retailers is invaluable, and FNS's evaluation of the Implementation Plan will take into consideration any such collaboration that has influenced development of the plan. For example, as part of the communication plan, States should identify any organizations that will be assisting the State with developing and/or distributing materials and information, as well as indicate any collaboration with and input obtained from stakeholders in the development of the communication plan to clients and retailers. As a result, FNS is adding language at 7 CFR 274.8(f)(14)(iii) to indicate that States must include information regarding any stakeholder collaborations in the Implementation Plan as well.

Limited English Proficient (LEP) SNAP clients—Four advocacy organizations wanted Implementation Plans to detail the State's training plan for LEP clients. They also asked that examples of letters and other materials communicating the policy to clients and retailers should include appropriate translations. FNS agrees with the spirit of this recommendation, and notes that the photo EBT card materials and information are subject to the language requirements in 7 CFR 272.4(b) regarding translation and interpretation, and States are prohibited from unlawfully discriminating against any applicants or participants as specified in 7 CFR 272.6(b)(1). In addition, 7 CFR 274.8(f)(14)(v) requires States to demonstrate how the photo EBT card materials comply with civil rights laws. FNS will review States' Implementation Plans to ensure that SNAP recipient training, materials, and information provide meaningful access to LEP individuals and conform to the requirements of Title VI of the Civil Rights Act of 1964. FNS will also obtain translations of all materials that will be used to inform clients, retailers, and other stakeholders. For clarification purposes, FNS is referencing language requirements and civil rights laws at 7 CFR 274.8(f)(14)(iii) and (v), respectively, in the final rule.

Retroactive implementation plans—Two grocer associations and two advocacy organizations wanted FNS to require States with current photo EBT programs to retroactively submit Implementation Plans. FNS is actively involved in ensuring that the current photo EBT card programs are meeting all FNS requirements. FNS believes that the efforts in those States should be focused on correcting any compliance issues rather than developing an implementation plan for a program that is already operating, so FNS will not be requiring those states to submit an Implementation Plan.

Disaster Plan—One grocer association suggested that FNS require States to address the use of photo EBT cards in their disaster plans. FNS strongly encourages States choosing to place photos on EBT cards to plan for and develop procedures for how the State will issue EBT cards in the event of a disaster. FNS is not requiring States to include processes for addressing photo EBT cards in their disaster plans because Section 5(h)(3)(B) of the Food and Nutrition Act gives the Secretary the authority to adjust issuance methods to be consistent with what is practicable under actual conditions in the affected area.

Conditional Approval of Implementation Plan—FNS is also clarifying at 7 CFR 274.8(f)(14)(i) that if a State's Implementation Plan is not sufficient for successful implementation of the photo EBT card option, FNS may issue a denial or an approval subject to conditions.

Post-Implementation Assessment

One advocacy organization specifically requested that FNS expand the data collected as part of the post-implementation assessment and evaluation to include the types of households impacted by the State's photo EBT card policy, not just the numbers or percentages, in order to help identify a group/type of household member that needs to be exempted from

the policy. Other respondents more generally suggested that FNS monitor the impact on various groups as part of ongoing monitoring provided for in 7 CFR 274.8(f)(17). FNS notes that many vulnerable groups are already exempt from mandatory photo EBT card policies under 7 CFR 274.8(f)(4). These groups include, at a minimum, the elderly, the disabled, children under 18, homeless households, and victims of domestic violence. States may also establish additional exemptions. Therefore, FNS believes that the value gained from requiring States to obtain data on these groups would not be substantial. As a result, the minimum information required in the post-implementation report remains unchanged in the final rule.

Ongoing Monitoring

FNS received several comments in response to questions posed in the proposed rule asking how FNS should verify appropriate implementation on an ongoing basis, and whether there is other data that should be required from States on an ongoing basis and how frequently States should be required to report. Respondents suggested several areas for ongoing monitoring such as tracking the impact of photo EBT policies on LEP households, the elderly, individuals with disabilities, and non-applicant heads of households; tracking client complaints; seeking advocate feedback on an ongoing basis; and periodically surveying stores after implementation to validate that the photo EBT requirements are understood. Respondents also suggested annual reporting and more frequent reporting during the first year of photo EBT operations. While FNS understands the desire for more detailed data, unfortunately, such data are not readily available to the States or reliable because they are not collected in any systematic way.

Nine advocacy organizations wanted FNS to stipulate that any State agency which decides to implement the photo EBT card option must *continue* to meet metrics set forth by the Department or suspend photo EBT. The proposed provisions at 7 CFR 274.8(f)(17)–(18) stipulate that FNS would continue to monitor and evaluate the operation of the photo EBT card option and, should there be problems with the State's implementation, FNS may require corrective action by the State. If that were to fail, FNS would consider other possible actions, including suspension of the States' photo EBT policy. As with all SNAP statutory, regulatory, and policy provisions, FNS has established processes for ensuring States are meeting SNAP requirements, such as through the Management Evaluation (ME) reviews. FNS intends to follow these same processes with respect to the photo EBT card option. Should FNS find that a State is not meeting any of the SNAP performance standards after implementation, the State's photo EBT card policy would be examined to determine its impact on any deficiencies found and whether the photo EBT card policy and implementation should be included in the appropriate actions to remedy the situation.

Two advocacy organizations suggested FNS classify any adoption of photo EBT cards as a major systems change so that it automatically requires the State to collect the data specified at 7 CFR 272.15. Conversely, two individual respondents and one State agency expressed concern that the proposed reporting requirements were excessively burdensome to State agencies and that the rule provided seemingly unbounded discretion to the Secretary for ongoing monitoring.

FNS appreciates the thoughtful feedback respondents provided. Although Section 11 of the Act provides the Secretary with broad authority for the monitoring and oversight of SNAP, FNS understands that some specific parameters with regard to ongoing monitoring of the photo EBT option would be helpful for all stakeholders involved. FNS has determined that more specific requirements would be best addressed through separate guidance to allow for flexibility. With respect to classifying the photo EBT card option as a major change, FNS determined prior to publishing the Major Change rule (81 FR 2725 (January 19, 2016)) that it would not be the appropriate process for implementing photo EBT card operating standards because major changes, as defined in the rule, specifically relate to SNAP certification processes, and how process or technology changes impact the ability of SNAP applicants and participants to interact with the State agency or be certified for benefits. The photo EBT card option is a function of issuance, not certification, and therefore, cannot impact whether or not a household is eligible for SNAP participation.

As with comments received regarding the Implementation Plan requirements and performance standards, FNS will consider comments on the proposed rule regarding ongoing monitoring in the development of any criteria or further guidance for evaluating States' photo EBT card policies on an ongoing basis. The final rule clarifies at 7 CFR 274.8(f)(17) that State agencies will be required to provide FNS additional information upon request to conduct ongoing evaluations.

Modifying Implementation of Photo EBT Card Option

In response to FNS' specific question seeking comments on whether a State should be required to stop or suspend placing photos on EBT cards if the State agency fails to establish procedures to ensure that all members of the household or any authorized representatives are able to use the card, four advocacy organizations supported FNS taking action to suspend a State's Photo EBT card policy. One respondent urged FNS to establish and enforce a penalty that is real and meaningful when States ignore or defy Federal enforcement, and to render a State ineligible to continue its photo EBT card policy if it is found to have a negative impact on a State's ability to process SNAP applications and issue benefits in a timely manner. Another respondent suggested that review of the photo EBT card policies be added as a part of the State Agency Management Evaluation (ME).

In the absence of a concrete alternative process for assessing and imposing penalties for noncompliance with the photo EBT card requirements or for other deficiencies that may be the result of the State's photo EBT card policy, FNS will continue to follow existing procedures for evaluating and addressing situations when a State agency is not meeting standards contained in the Act, regulations, and/or the State Plan of Operation, including procedures for ME reviews, corrective actions, and suspension/disallowance of federal administrative funding. As a result, the final rule remains unchanged with regard to State noncompliance and penalties.

Provisions Regarding Public Posting of Implementation Plans, Non-Applicants, and Retailer ''Testers''

In the proposed rule, FNS posed other specific questions for comment. These questions involved whether there are concerns with posting approved Implementation Plans on the FNS public Web site, whether there was a potential benefit for allowing non-applicants to have their photograph taken under a voluntary implementation, and whether stakeholders believe ''testers'' to be a worthwhile method for verifying appropriate implementation at authorized retailer locations. Ten advocacy organizations and two State agencies agreed with the rationale that approved Implementation Plans are public information and should be

posted on the FNS Web site, and with prohibiting the taking of photos of non-applicants under a voluntary photo EBT card policy as proposed in 7 CFR 274.8(f)(3)(iii). One commenter suggested photographs of non-applicants be allowed only on alternate cards, where an alternate card is required by the state agency or requested by the household to be issued to a person who is not a member of the SNAP household. With regard to ''testers,'' respondents, in general, including six advocacy organizations, two grocers associations, one electronic funds association and one State agency, supported using the method to determine if any barriers have been created due to a State's photo EBT card policy. However, the two grocers associations felt that the method should be used only if retailers were not subjected to any penalties for a poor outcome, while the State agency suggested the method be a State option, given the administrative costs involved, and only if retailers faced sanctions for failing to adhere to State or Federal policies.

Based on the above comments, FNS will not require States to use ''testers'' to verify proper implementation of photo EBT card policies at retailer locations. However, FNS encourages States to consider such a method when developing their overall strategies to ensure benefit access is not being held up or denied in the checkout lines. Therefore, the final rule remains unchanged with respect to posting approved Implementation Plans and prohibiting States from placing non-applicant photos on EBT cards. With respect to ''testers'', FNS is adding language at 7 CFR 274.8(f)(16)(i)(B) as an option for monitoring retailer compliance.

Provisions Beyond 7 CFR 274.8(f)

Card Text—Twenty-two respondents, including 10 advocacy organizations, eight clients, two grocers associations, one individual, and one State agency, commented with respect to the proposed requirement at 7 CFR 274.8(b)(5)(ii) that States with photo EBT cards add text to all of the State's EBT cards informing retailers and clients that all household members and authorized representatives, including individuals permitted by the household to purchase food or meals on its behalf, are allowed to use the EBT card even if their photo is not on the card or no photo is on the card. All respondents supported the requirements, but some wanted FNS to mandate specific wording to be placed on the cards rather than allow States to develop alternative language. Through the Implementation Plan approval process, FNS will look closely at the wording States intend to place on the cards to ensure that it is clear and conveys the appropriate information. Because the wording may be impacted by the space available on the card or may evolve over time based on subsequent State experiences, FNS is maintaining State discretion to propose their own text to place on EBT cards in the final rule. However, FNS will add language at 7 CFR 274.8(f)(14)(iii) to specify that the Implementation Plan must also include the text required by 7 CFR 274.8(b)(5)(ii).

Respondents also asked FNS to require States to place a 24-hour toll-free emergency number for retailers to call with questions about photo EBT requirements as well as a number for clients to call if they are being denied the right to use the household photo EBT card. In addition, respondents suggested requiring a Web site on the card where retailers and clients could go for information on the State's photo EBT card policy. All States already have toll-free customer service numbers for both clients and retailers, some of which operate 24 hours. Many States also have or plan to have EBT client Web sites. Furthermore, these toll-free numbers and Web sites are already on many of the State's EBT cards. Again, FNS believes States should continue to have the same discretion in this area as they do for addressing all other EBT customer service issues. However, FNS will review photo EBT card Implementation Plans to ensure States will have a process in place for clients and retailers to get their issues related to the photo EBT program addressed as well as to ensure that clients and retailers are informed of this process.

Using multiple cards for SNAP purchases—In an attempt to address the existence of violating retailers and others buying and using multiple cards and PINs to stock their shelves, the proposed rule included a provision at 7 CFR 272.8(h) to require SNAP retailers to ask for identification from SNAP customers using three or more EBT cards at once for purchases and to report that information to the USDA OIG Fraud Hotline if fraud is suspected. Many concerns with this proposed policy were raised by the three grocers associations, one State agency and one advocacy organization. FNS agrees with respondents' concerns that such a requirement would present significant challenges for SNAP retailers for a variety of reasons. In particular, FNS agrees with a respondent's comment that it would not be prudent to require clerks, who are sometimes as young as 16 years old, to enter into what could potentially be a confrontational situation with a customer.

Alternatively, one respondent suggested that multiple card use not be allowed for a single transaction or by an individual for multiple transactions. Other respondents commented that there are circumstances where an individual could be using multiple EBT cards to legally purchase food for SNAP recipients and a limitation on the number of cards an individual may use at one time may create access issues for some recipients. Based on the comments received, FNS is removing this provision in the final rule and will consider prohibiting the use of multiple cards for future rulemaking. Although customers may use multiple EBT cards at the point of sale, retailers should continue to report any suspicious activity to the USDA OIG Fraud Hotline. The final rule is modified accordingly at 7 CFR 278.2(h).

IV. Procedural Matters

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, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated significant. Accordingly, the rule has been reviewed by the Office of Management and Budget. A summary of the regulatory impact analysis is included below. The full analysis is available through *www.regulations.gov* in the docket for this rule (FNS–2016–0003).

Regulatory Impact Analysis Summary

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. The full RIA is included in the supporting documents of the rule docket at *www.regulations.gov.* The following summarizes the conclusions of the regulatory impact analysis.

Need for Action: This final rule would incorporate into regulation and expand on guidance that was issued December 29, 2014 to certain State agencies. Based on observed implementation to date,

there is cause for concern about possible negative impacts of photo EBT programs on client access and civil rights, both as programs are first implemented and over time. This guidance requires States that intend to implement the photo EBT card option to submit a comprehensive Implementation Plan for FNS approval that addresses key operational issues to ensure State implementation complies with all Federal requirements and that program access is protected for participating households. In this final rule, the Department clarifies that the State option to place a photo on an EBT card is a function of issuance. Pursuant to this, State agencies are prohibited from having photo EBT requirements that affect the eligibility process. This includes ensuring that the photo EBT option is implemented in a manner that does not impose additional conditions of eligibility or adversely impact the ability of eligible Americans to access the nutrition assistance they need.

Benefits: The Department believes the provisions in this final rule provide qualitative benefits to State agencies, SNAP participants, and authorized retailers. The Act and existing program regulations provide that States that implement a photo on the EBT card must establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may use the card. This final rule provides clear parameters for States wishing to implement photo EBT to ensure that State implementation is consistent with all Federal requirements and that program access is protected for participating households, which safeguard the rights of clients, provide training to staff, clients, and retailers, and improve program administration.

Costs: States choosing the photo EBT option may incur additional administrative costs, which may vary based on the size and scope of the State's operations and whether implementation of the photo EBT card option is mandatory or voluntary. Regardless of whether the option is mandatory or voluntary, all States that implement photo EBT cards will incur certain implementation costs to include: Preparing an Implementation Plan; communications and training for program staff, clients, and retailers; ongoing training costs to maintain an understanding of photo EBT card policies; programming costs for mandatory policies; and costs for the post implementation assessment, evaluation and on-going monitoring. States with a mandatory photo EBT policy will also incur costs associated with prorating and storing benefits for noncompliant household members that choose not to be photographed. The Department estimates the total cost to be approximately $9.3 million, shared 50/50 by the State and the Federal government, over five years, assuming six States choose to implement a mandatory photo EBT card policy. Costs would be lower if some or all of these States choose to implement voluntary, rather than mandatory, photo EBT card policies. The estimate of six States is based on information from State legislatures that are either currently considering or discussing the possibility of considering such a policy. Given the projected timelines for these legislative actions, the Department assumes that the costs of implementing a photo EBT card policy will be phased in over a five year period, as all six States are unlikely to approve and implement the policy in the same year. The States that have already implemented photo EBT as a State option will not be required to retroactively submit Implementation Plans, but may continue to incur minimal costs associated with ongoing training and monitoring required for program staff, clients, and retailers.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Administrator of FNS certifies that this final rule would not have a significant impact on a substantial number of small entities. This final rule primarily impacts State agencies. As part of the requirements, State agencies would have to educate retailers about the photo EBT card. There will not be a substantial impact on small entities such as small retailers since the treatment of clients with EBT cards and photo EBT cards do not vary. Minimal changes will be required of retailers. Retailers will need to be aware that some clients may present photo EBT cards but clients shall not be treated any differently. This is not expected to create a burden on retailers.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $146 million or more in any one year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132, requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This is intended to have retroactive effect in that State agencies that have already implemented

a photo EBT card must meet all requirements of this final rule except the requirement to submit an Implementation Plan prior to State's planned implementation date. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

On February 18, 2015, the Food and Nutrition Service held an information session. During the information session, no comments were received on the proposal. Reports from these sessions are part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA offers these and similar opportunities, such as webinars and teleconferences, for collaborative conversations with Tribal leaders and their representatives concerning ways to improve rules with regard to their effect on Indian country on a quarterly basis as part of its yearly Tribal information sharing schedule.

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

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of religion, age, race, color, national origin, sex, political beliefs, or disability. After a careful review of the rule's intent and provisions and understanding the intent of this rule is to in part to protect the civil rights of clients, FNS has determined that this rule is not expected to adversely affect the participation of protected individuals in the Supplemental Nutrition Assistance Program. Discrimination in any aspect of the Program administration is prohibited by these regulations, according to the Act. Enforcement may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

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

In accordance with PRA, this final rule does not contain information collections that are subject to review and approval by OMB.

This rule requires State agencies to submit to FNS an Implementation Plan, a post implementation evaluation of the photo EBT implementation, and related ongoing measures. As the PRA requirements are applicable to collection of information from ten or more respondents, there are no information collection requirements that are subject to OMB review at this time. Should the number of estimated respondents reach ten or more, FNS will publish a notice for comment and submit the applicable requirements to OMB for review and approval.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 272

Alaska, Civil rights, SNAP, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs—social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income (SSI), Wages.

7 CFR Part 274

Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Banks, banking, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, 7 CFR parts 271, 272, 273, 274, 278 are amended as follows:

■ 1. The authority citation for parts 271, 272, 273, 274 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2036c.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In § 271.2, revise the definition of Identification (ID) card to read as follows:

§ 271.2 Definitions.

* * * * *

Identification (ID) card means a card for the purposes of 7 CFR 278.2(j).

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.1 [Amended]

■ 3. In § 272.1, remove and reserve paragraphs (g)(30) and (47).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOULDS

■ 4. In § 273.2:

■ a. Amend paragraph (a)(1) by adding to the end of the third sentence the words, '', including in the implementation of a photo EBT card policy'' and by adding a new sentence between the third and fourth sentences.

■ b. Amend paragraph (a)(2) by adding a new sentence before the last sentence.

■ c. Amend paragraph (e)(1) by adding a new sentence after the third sentence.

■ d. Amend paragraph (n)(2) by removing in the third sentence the

words, ''and on the food stamp identification (ID) card, as provided in 7 CFR 274.10(a)(1) of this chapter'' and by removing the last sentence.

■ e. Amend the first sentence of paragraph (n)(3) by removing the words, ''ID card and benefits'' and adding in its place the words, ''EBT card''.

The additions read as follows:

§ 273.2 Office operations and application processing.

(a) * * *

(1) * * * The State agency's photo EBT card policy must not affect the certification process for purposes of determining eligibility regardless of whether an individual has his/her photo placed on the EBT card. * * *

(2) * * * States must meet application processing timelines, regardless of whether a State agency implements a photo EBT card policy. * * *

* * * * *

(e) * * * State agencies may not require an in person interview solely to take a photo. * * *

* * * * *

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

■ 5. In § 274.8:

■ a. Redesignate paragraphs (b)(5)(ii) through (iv) as paragraphs (b)(5)(iii) through (v), respectively, and add a new paragraph (b)(5)(ii).

■ b. Add paragraph (f).

The additions read as follows:

§ 274.8 Functional and technical EBT system requirements.

* * * * *

(b) * * *

(5) * * *

(ii) State agencies that implement the photo EBT card option in accordance with paragraph (f) of this section must print on the EBT cards the text ''Any user with valid PIN can use SNAP benefits on card and need not be pictured.'' or similar alternative text approved by FNS.

* * * * *

(f) *State agency requirements for photo EBT card implementation*—(1) Minimum requirements. Prior to implementation, State agencies must be performing sufficiently well in program administration to be eligible to implement the photo EBT card option.

Prior to implementation, State agencies must demonstrate to FNS successful administration of SNAP based on SNAP performance standards. Successful program administration will take into account at a minimum the metrics related to program access, the State's payment error rate, the State's Case and Procedural Error Rate, application processing timeliness, including both the 7-day expedited processing and the 30-day processing standards, timeliness of recertification actions, and other metrics, as determined by the Secretary, that may be relevant to the State agency's implementation of photo EBT cards.

(2) *Function of issuance.* The photo EBT card option is a function of issuance and not a condition of eligibility. Any implementation of the option to place a photo on the EBT card must not impact the certification of households. An application will be considered complete with or without a photo and a case shall be certified regardless of the status of a photo in accordance with timeframes established under 7 CFR 273.2. If a State agency chooses to implement a voluntary photo EBT card policy, issuance shall not be impacted. If a State agency chooses to implement a mandatory photo EBT card policy, a State agency may not deny or terminate a household because a household member who is exempted by paragraph (f)(4) of this section does not comply with the requirement to place a photo on the EBT card.

(3) *Mandatory vs. voluntary.* (i) State agencies shall have the option to implement a photo on EBT cards on a mandatory or voluntary basis. Regardless of whether the photo is mandatory or voluntary, the certification process must not be altered in order to facilitate photos, and clients must be informed that certification will not be impacted by whether or not a photo is on the card.

(ii) Under mandatory implementation, State agencies must exempt certain clients, as stated in paragraph (f)(4) of this section. State agencies must establish which member(s) of the household would be required to be photographed and the procedures that allow eligible nonexempt household members who do not agree to the photo to come into compliance at a later time.

(iii) Under voluntary implementation, clients must be clearly informed of the voluntary nature of the option. All applicant members of households, whether or not they are in an exempted category, must opt in to have a photo on their EBT card. States shall not require a photo be taken if the State is implementing a voluntary option.

(4) *Exemptions.* Under a mandatory implementation, the State agency must exempt, at a minimum, the elderly, the disabled, children under 18, homeless households, and victims of domestic violence. A victim of domestic violence shall be able to self-attest and cannot be required to submit documentation to prove domestic violence. The ability to self-attest must be applied equally regardless of if the victim is a female or male. Non-applicants cannot have a photo taken for an EBT card whether or not they desire to have their photo taken. A State agency may establish additional exempted categories.

(5) *Serving clients with hardship.* State agencies must have sufficient capacity to issue photo EBT cards and a process or procedure in place to address, on a case-by-case basis, household hardship situations as determined by the State agency so that such household benefits are not unduly withheld. Examples of hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from being available during the hours that photos are taken in-office. These are households that do not already fall under the mandatory exemptions or other exemptions established by the State under paragraph (f)(4) of this section .

(6) *Issuance of photo EBT card.* (i) States can require households to come in to be photographed, but cannot do so for the purposes of certification. The amount of time provided to households to come in and be photographed needs to be sufficient and reasonable and be documented in the Implementation Plan as required in paragraph (f)(14) of this section.

(ii) Regardless of whether the State's photo EBT card policy is voluntary or mandatory, if a household meets expedited criteria, the State must issue the EBT card without a photo and provide the full benefit allotment to the entire household without delay. The State agency may require a nonexempt head of household member to comply at the next recertification.

(iii) Card issuance procedures for new SNAP households must ensure adherence to application processing standards as required at 7 CFR 273.2(g) and (i) and benefit issuance standards at § 274.2(b).

(iv) State agencies shall not store photos that are collected in conjunction with its photo EBT card policy but are not placed on an EBT card.

(v) The process for issuing and activating photo EBT cards must not disrupt, inhibit or delay access to benefits nor cause a gap in access for ongoing benefits for eligible households.

(vi) Any card issued as part of the implementation of the photo EBT card option may not count against the

household with respect to card replacement fees or the card replacement threshold defined in § 274.6(b).

(7) *Prorating household benefits when photo EBT cards are mandatory.* For multi-person households, State agencies shall not withhold benefits for an entire household because nonexempt household members do not comply with the photo EBT card policy. If benefits of the nonexempt household member(s) are to be withheld, a prorated share of benefits shall be issued to the household member(s) that are in compliance with or are exempt from the photo requirement. For example, if there are four household members and one household member is not in compliance with the photo requirement, 3–4 of the household's monthly benefit allotment must be issued, and 1–4 of the benefit allotment must be held in abeyance and allowed to accrue until the household member complies. For a single person household, the State agency would hold all the benefits in abeyance until the household complies.

(8) *Benefits held for noncompliance.* Benefits held for noncompliance with the photo EBT card requirement must be withheld from issuance in accordance with paragraph (f)(7) of this section. Benefits withheld for noncompliance shall not remain authorized for perpetuity, and States must treat such benefits in accordance with the same timeframe used for handling expungements under § 274.2(h)(2). If the noncompliant member comes into compliance, the non-expired benefits must be issued within two business days of when the State agency obtains the client photo. Any action to withhold benefits from issuance is subject to fair hearings in accordance with 7 CFR 273.15.

(9) *Household and authorized representative card usage.* The State agency must establish procedures to ensure that all appropriate household members and authorized representatives (including individuals permitted by the household to purchase food or meals on their behalf, as provided for in 7 CFR 273.2(n)(3) and § 274.7(a)), can access SNAP benefits for the household regardless of who is pictured on the card or if there is no picture. States shall not require households to notify or provide the State information regarding individuals making purchases permitted by the household on an ad-hoc basis.

(10) *Client and staff training.* State agencies must ensure staff and clients are properly trained on photo EBT card requirements. At a minimum, this training shall include: Whether the State option is voluntary or mandatory, who must comply with the photo requirement, which household members are exempt, and that all appropriate household members and authorized representatives (including individuals permitted by the household to purchase food or meals on its behalf) are able to use the card regardless of who is pictured on the card or if there is no picture.

(i) All staff and client training materials must clearly describe the following statutory and regulatory requirements:

(A) Retailers must allow all appropriate household members and authorized representatives (including individuals permitted by the household to purchase food or meals on its behalf), regardless of whether they are pictured on the card, to utilize the card without having to submit additional verification of identity as long as the transaction is secured by the use of the PIN;

(B) EBT cards with or without a photo are valid in any State; and

(C) Retailers must treat all SNAP clients in the same manner as non-SNAP clients;

(ii) State agencies may not specifically reference which categories of individuals are exempt from the photo EBT requirement in any materials to retailers.

(11) *Retailer education and responsibility.* State agencies must conduct sufficient education of retailers if photos are used on cards. The State agency must clearly inform all retailers in the State and contiguous areas of implementation. State agency communications with retailers must clearly state:

(i) All household members and authorized representatives (including individuals permitted by the household to purchase food or meals on its behalf) are entitled to use the EBT card regardless of the picture on the card if the EBT card is presented with the valid PIN;

(ii) Retailers must treat all SNAP clients in the same manner as non-SNAP clients in accordance with 7 CFR 278.2(b);

(iii) Retailers must not prohibit individuals who have a EBT card and valid PIN, including but not limited to authorized representatives (including individuals permitted by the household to purchase food or meals on its behalf), from using an EBT card because they are not pictured on the card or there is no picture on the card;

(iv) EBT cards from any State are valid with or without a photo.

(12) *Interoperability.* Interoperability of EBT cards will remain the same regardless of whether or not there is a photo and regardless of which State issued the card. State agencies must conduct sufficient education of clients and retailers, including retailers in contiguous areas, to inform them that the photo EBT cards remain interoperable and authorized retailers must accept EBT cards from all States as long as the user has a valid PIN.

(13) *Advance Planning Document.* Appropriate implementation and administration of the photo EBT card consistent with all applicable requirements is an allowable State administrative cost that FNS shall reimburse at 50 percent in accordance with 7 CFR part 277. Increased costs related to placing photos on the EBT card, whether contractual or produced from other sources, require an Implementation Advance Planning Document Update.

(14) *Implementation Plan.* (i) State agencies must submit an Implementation Plan for approval prior to implementation that delineates how the State agency will operationalize the photo EBT option. FNS shall review the plan and issue an approval, request modifications prior to granting approval or issue an approval subject to conditions. In cases where FNS finds that the steps outlined in the Implementation Plan are not sufficient for a successful implementation, FNS may deny the Implementation Plan or issue an approval subject to conditions, such as requiring the State agency to implement a successful pilot in a selected region of the State before a statewide implementation. Should a State be required to implement a pilot before statewide implementation, that requirement would be documented in the State's Implementation Plan approval, along with any information the State must report to FNS before expansion approval would be provided by FNS.

(ii) State agencies must demonstrate successful administration of SNAP based on SNAP performance standards as established in paragraph (f)(1) of this section. State agencies shall not issue EBT cards with photos before the State's Implementation Plan is approved and the State agency has also received FNS authorization to proceed to issue photo EBT cards.

(iii) The Implementation Plan shall include but not be limited to:

(A) A description of card issuance procedures;

(B) The text required at paragraph (b)(5)(ii) of this section;

(C) A detailed description of how client protections and ability to use SNAP benefits will be preserved;

(D) Specific information about exempted recipients, the State agency's exemption criteria, and how it will address the needs of household members with hardships;

(E) A description of how the State agency will obtain photographs for the EBT card;

(F) The procedures for opting into a voluntary photo EBT card policy and how the State agency will document that a household voluntarily chose to have a photo on its EBT card;

(G) Training materials and training plans for State agency staff;

(H) A description of any planned stakeholder assistance with implementation;

(I) Communication plans for informing clients, retailers and other stakeholders of the State agency's photo EBT card policy, including copies of letters and other materials communicating the policy to clients, retailers, and other stakeholders. Communication plans must describe compliance with language requirements at 7 CFR 272.4(b);

(J) A timeline for the implementation; and

(K) Draft memoranda of understanding if the State agency plans to share SNAP client data in accordance with 7 CFR 272.1(c) for purposes of implementing its photo EBT card option. The memoranda of understanding must state how any information collected will be securely stored and that the information can only be shared for the purpose of SNAP in accordance with 7 CFR 272.1(c).

(iv) The Implementation Plan shall also address the anticipated timetable with specific action steps for the State agency and contractors, if any, that may be involved regarding implementation of the photo EBT card option, the State agency's capacity to issue photo EBT cards, and the logistics that shall allow for activation of the photo EBT card simultaneously or followed by deactivation of the active non-photo EBT card. This shall also include the description of the capacity at the facility where the photo EBT cards will be produced, both for transition and ongoing production, and confirmation that the State agency and any contractor will continue to meet regulatory time requirements for all EBT card issuances and replacements, including for expedited households. The Implementation Plan must also include indicators related to the photo EBT card implementation that the State will collect and analyze for the post implementation evaluation required by paragraph (f)(16) of this section in addition to the State's approach for continued oversight, which may include activities as such as the use of test shoppers.

(v) The State agency shall provide all applicable proposed written policy for staff to implement the photo EBT card option to FNS for review. State agencies shall include copies of all materials that will be used to inform clients, retailers and other stakeholders regarding photo EBT card implementation. In addition, the State agencies shall provide a detailed description of how the notifications, communication, policies, and procedures regarding the implementation of any new photo EBT card option will comply with applicable civil rights laws specified at 7 CFR 272.4(b)and 272.6(a).

(vi) The State agency's Implementation Plan shall also include: (A) An education component for retailers and clients to ensure all eligible household members and authorized representatives (including individuals permitted by the household to purchase food or meals on their behalf) are able to use the EBT card, and understand the timeframes associated with the implementation and rollout.

(B) A description of the resources that will be in place to handle comments, questions and complaints from clients, retailers, and external stakeholders, and

(C) A description of procedures to address unexpected events related to the photo EBT card option.

(vii) Upon approval of the Implementation Plan by FNS, the State may proceed with tasks described in the Implementation Plan, as modified by the approval, but may not proceed to issuing actual cards until it receives FNS authorization to do so. FNS may also require the State to implement in a phased manner, which may include criteria as determined by the Secretary.

(15) *Authorization to issue photo EBT cards.* States agencies shall not be permitted to issue EBT cards with photos until FNS provides an explicit authorization to issue photo EBT cards. After an Implementation Plan is approved, FNS will review the State agency's actions at an appropriate time interval to ensure that the process and steps outlined by the State agency in the Implementation Plan are fulfilled. In cases where the State agency has not acted consistently with the process and steps outlined in its photo EBT card Implementation Plan, FNS may deny authorization for the State agency to issue EBT cards with photos until the State agency has done so successfully.

(16) *Post implementation assessment and evaluation.* State agencies must submit to FNS a post-implementation assessment that provides FNS with a report of the results of its implementation, including any issues that arose and how they were resolved, the degree to which State agency staff, clients and retailers properly understood and implemented the new provisions.

(i) This report shall be delivered to FNS within 120 days of implementation. This report shall cover the first 90 days of implementation. The Department also reserves the right to conduct its own review of the State agency's implementation. The State agency's post-implementation report shall include at a minimum:

(A) A survey of clients conducted by an independent evaluator to demonstrate the clients' clear understanding of the State agency's photo EBT policy;

(B) A survey of retailers conducted by an independent evaluator that demonstrates evidence that at least 80 percent of retailers, including smaller independent retailers, demonstrate a full understanding of the policies related to the photo EBT card, which may include the use of test shoppers;

(C) The amount and percent of benefits held for noncompliance if mandatory;

(D) The number and percent of households with photo EBT cards;

(E) The number of households affected by withholding for noncompliance, if mandatory;

(F) The number and percent of households exempt from the photo EBT card requirement if mandatory;

(G) The number and percent of exempted households who opted for photo EBT cards if mandatory;

(H) The number and scope of complaints related to the implementation of the policy;

(I) The State agency's Case and Procedural Error Rate; and

(J) SNAP performance metrics as established in paragraph (f)(1) of this section and other SNAP performance metrics that may have been adversely affected by the implementation of the State agency's photo EBT card option, as determined by the Secretary.

(ii) [Reserved]

(17) *Ongoing monitoring.* FNS will continue to monitor and evaluate the operation of the option. State agencies shall provide FNS additional information upon request or as may be required by other guidelines established by the Secretary to conduct such evaluations.

(18) *Modifying implementation of photo EBT card option.* If any review or evaluation of a State's operations, including photo EBT operation implementation, finds deficiencies, FNS

may require a corrective action plan consistent with 7 CFR 275.16 to reduce or eliminate deficiencies. If a State does not take appropriate actions to address the deficiencies, FNS would consider possible actions such as requiring an updated photo EBT Implementation Plan, suspension of the photo EBT policy and/or withholding funds in accordance with 7 CFR 276.4.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 6. In § 278.2, revise paragraph (h) and remove and reserve paragraphs (i) and (k).

The revision reads as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(h) *Identifying benefit users.* Retailers must accept payment from EBT cardholders who have a valid PIN regardless of which State the card is from or whether the individual is pictured on the card. Where photo EBT cards are in use, the person presenting the photo EBT card need not be pictured on the card, nor does the individual's name need to match the one on the card if the State includes names on the card. However, benefits may not knowingly be accepted from persons who have no right to possession of benefits. If fraud is suspected, retailers shall report the individual to the USDA OIG Fraud Hotline.

* * * * *

Dated: December 7, 2016.

Audrey Rowe,

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

[FR Doc. 2016–29841 Filed 12–12–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2016–9172; Special Conditions No. 23–276–SC]

Special Conditions: DAHER–SOCATA, Model TBM 700; Inflatable Four-Point Restraint Safety Belt With an Integrated Airbag Device

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the installation of an inflatable four-point restraint safety belt with an integrated airbag device at the pilot and copilot seats on the DAHER–SOCATA, Model TBM 700 airplane. These airplanes, as modified by the installation of these inflatable safety belts, will have novel and unusual design features associated with the upper-torso restraint portions of the four-point safety belts, which contain an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective December 13, 2016 and are applicable on December 6, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, MO; telephone (816)–329–4140; facsimile (816)–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2016, DAHER–SOCATA (SOCATA) applied for FAA validation for the optional installation of a four-point safety belt restraint system for the pilot and copilot seats and incorporating integrated inflatable airbags for both on the Model TBM 700 airplane. The Model TBM 700 airplane is a single-engine powering a four bladed turbopropellor. It has a maximum takeoff weight of 6578 pounds (2984 kg). In addition to a pilot and copilot, it can seat up to five passengers.

The inflatable restraint systems are four-point safety belt restraint systems consisting of a lap belt and shoulder harness with an inflatable airbag attached to the shoulder harness straps. The inflatable portion of the restraint system will rely on sensors electronically activating the inflator for deployment.

If an emergency landing occurs, the airbags will inflate and provide a protective cushion between the head of the occupant (pilot and copilot) and the structure of the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner similar to an automotive airbag; however, the airbag is integrated into the shoulder harness straps. Airbags and inflatable restraints are standard in the automotive industry; the use of an inflatable restraint system is novel for general aviation.

The FAA has determined that this project will be accomplished on the basis of providing the same level of safety as the current certification requirements of airplane occupant restraint systems. The FAA has the following two primary safety concerns with the installation of airbags or inflatable restraints that—

1. They perform properly under foreseeable operating conditions; and

2. They do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Both actions may result in a loss of control of the airplane. The consequences are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. SOCATA must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane and that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. The potential for inadvertent deployment may increase as a result of this cumulative damage. Therefore, the impact of wear and tear resulting with an inadvertent deployment must be considered. The effect of this cumulative damage means duration of life expectations must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification

testing of the firing hardware and software must consider the following—

1. The airplane vibration levels appropriate for a general aviation airplane; and

2. The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include High-Intensity Radiated Fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the occupant restraints currently installed, the inflatable restraint system must show that it will offer an equivalent level of protection for an emergency landing. If an inadvertent deployment occurs, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

Where installed, the inflatable restraint system must deploy and provide protection for each occupant under an emergency landing condition. The Model TBM 700 airplane seats are certificated to the structural requirements of § 23.562; therefore, the test emergency landing pulses identified in § 23.562 must be used to satisfy this requirement.

A wide range of occupants may use the inflatable restraint; therefore, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. SOCATA may establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be armed even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require unoccupied seats with active restraints not pose a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

The design must also prevent the inflatable seatbelt from being incorrectly buckled or installed to avoid hindering proper deployment of the airbag. SOCATA may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the SOCATA, Model TBM 700 airplane identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate if the airbag deploys. When deployment occurs, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. The inflatable restraint should be protected from the effects of fire to avoid creating an additional hazard such as, a rupture of the inflator, for example.

Finally, the airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit offers a level of protection throughout an impact event.

Type Certification Basis

Under the provisions of 14 CFR 21.17, SOCATA must show that the Model TBM 700 airplane continues to meet the applicable provisions of the applicable regulations in effect on the date of application for the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the original type certification basis.

The certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator determines that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the inflatable restraint, as installed on the SOCATA, Model TBM 700 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model TBM 700 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the Noise Control Act of 1972.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the models for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The SOCATA, Model TBM 700 airplane will incorporate the following novel or unusual design feature:

Installation of inflatable four-point restraint safety belt with an integrated airbag device for the pilot and copilot seats.

Discussion

The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the shoulder harness in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure, which will provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations states performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the SOCATA, Model

TBM 700 airplanes equipped with four-point inflatable restraints. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion of Comments

Final special conditions number 23–276–SC [1] for the DAHER–SOCATA, Model TBM 700 airplanes and requesting comments was published in the **Federal Register** on September 30, 2016 (81 FR 67093). One comment was received that compared restraint safety to that of an automobile and stressed the importance considering airbag safety, the possibility of injuring or killing occupants during deployment and considerations for occupant safety for a range of occupants.

Aircraft accidents differ from car accidents in that they typically involve much higher speeds and also introduce a vertical impact component. The aviation regulations require an assessment of occupant safety in the horizontal and vertical planes. An airbag is normally triggered, deployed, and effective only in the horizontal plane. The special condition requires assessment for 5th percentile females to 95th percentile males. As such, very large and very small occupants are not considered in this special condition, but this is consistent with other FAA occupant safety rules.

Aircraft airbags, or inflatable restraints, (including the airbags subject to this special condition) are fundamentally different in their operation in comparison to automotive airbags. Automotive airbags normally deploy from the dashboard or steering wheel and push against the rigid structure as they powerfully deploy and engage the occupant. Inflatable restraints have the airbag deploy from the restraint and push away from the occupant and do not press on the occupant until the occupant, with significant inertia, is moving forward and impacting the interior. Smaller occupants, normally those killed by automotive airbags, are not as likely to engage the aircraft inflatable restraints against the interior.

There are no known fatalities or significant injuries from aircraft inflatable restraints that are attributable only to the airbag deployment itself. By nature, the inflatable restraints move away from the occupant, so injury to the occupant from deployment is very unlikely. Smaller occupants and children are still recommended to ride in aft seating, like in an automobile. These special conditions do consider and peripherally address a range of occupant sizes consistent with part 23 occupant safety rules.

This special condition does address the potential hazards commented upon, and the safety and effectiveness of the airbag system with consideration to a range of occupant sizes. No changes were made as a result of this comment, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the SOCATA, Model TBM 700 airplane. Should SOCATA apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the SOCATA, Model TBM 700 airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the SOCATA, Model TBM 700 airplane occupant restraint systems. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the SOCATA, Model TBM 700 airplane.

1. Installation of Inflatable Four-Point Restraint Safety Belt With an Integrated Airbag Device

a. It must be shown that the inflatable restraint will deploy and provide protection under emergency landing conditions. Compliance will be demonstrated using the dynamic test condition specified in § 23.562(b)(2). It is not necessary to account for floor warpage, as required by § 23.562(b)(3), or vertical dynamic loads, as required by § 23.562(b)(1). The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

b. The inflatable restraint must provide adequate protection for the occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

c. The design must prevent the inflatable restraint from being incorrectly buckled and incorrectly installed, such that the airbag would not properly deploy. It must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

d. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

e. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition or hazard to the airplane. In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order, TSO–C114, certificated belt and shoulder harness.

f. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

g. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

h. It must be shown that the inflatable restraint will not impede rapid egress of

[1] *https://www.regulations.gov/document?D=FAA-2016-9172-0001.*

the occupants 10 seconds after its deployment.

i. To comply with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

j. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

k. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

l. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

m. A life limit must be established for appropriate system components.

n. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri, on December 6, 2016.

Kelly Broadway,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29769 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2004

[Docket Number USTR–2016–0016]

RIN 0350–AA10

Production or Disclosure of Records, Information and Employee Testimony in Legal Proceedings

AGENCY: Office of the United States Trade Representative.

ACTION: Final rule.

SUMMARY: This rule adds subparts A and D to part 2004 of the Office of the United States Trade Representative's (USTR) regulations. Subpart A contains definitions used throughout part 2004. Subpart D governs how USTR responds to official demands and informal requests for records, information or employee testimony in connection with legal proceedings in which neither the United States nor USTR is a party. It includes the requirements and procedures for demanding or requesting parties to submit demands or requests, and factors for USTR to consider in determining whether USTR employees will provide records, information or testimony relating to their official duties.

DATES: The final rule will become effective December 13, 2016.

FOR FURTHER INFORMATION CONTACT: Janice Kaye, Monique Ricker or Melissa Keppel, Office of General Counsel, United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509, *jkaye@ustr.eop.gov; mricker@ustr.eop.gov*; *mkeppel@ustr.eop.gov*; 202–395–3150.

SUPPLEMENTARY INFORMATION: On September 22, 2016, USTR published a proposed rule to add subparts A and D to part 2004. *See* 81 FR 65309. The 60-day comment period ended on November 21, 2016. USTR did not receive any comments. We have made one non-substantive change to the proposed rule. In subpart A, which contain definitions used throughout part 2004, we added a new term—''OGIS''—which means the Office of Government Information Services of the National Archives and Records Administration. OGIS, offers FOIA dispute resolution services. For convenience, the entire text of the final rule is set out below.

Regulatory Flexibility Act

USTR has considered the impact of the final rule and determined that it is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to USTR's internal operations and legal obligations. *See* 5 U.S.C. 601 *et seq.*

Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 2004

Administrative practice and procedure, Courts, Disclosure, Exemptions, Freedom of information, Government employees, Privacy, Records, Subpoenas, Testimony.

■ For the reasons stated in the preamble, the Office of the United States Trade Representative is revising part 2004 of chapter XX of title 15 of the Code of Federal Regulations to read as follows:

PART 2004—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—Definitions

Sec.

2004.0 Definitions.

Subpart B—Freedom of Information Act Policies and Procedures [Reserved]

2004.1 through 2004.9 [Reserved]

Subpart C—Privacy Act Policies and Procedures [Reserved]

2004.10 through 2004.29 [Reserved]

Subpart D—Production or Disclosure of USTR Records, Information and Employee Testimony in Legal Proceedings

2004.30 Purpose and scope.
2004.31 Definitions.
2004.32 Production prohibited unless approved.
2004.33 Factors the General Counsel may consider.
2004.34 Submitting demands and requests.
2004.35 Processing demands and requests.
2004.36 Restrictions that apply to testimony.
2004.37 Restrictions that apply to released records or information.
2004.38 In the event of an adverse ruling.
2004.39 Fees.

Subpart A—Definitions

Authority: 19 U.S.C. 2171(e)(3).

§ 2004.0 Definitions.

For purposes of this part:

Days, unless otherwise indicated, means working days, and does not include Saturdays, Sundays, and legal public holidays. If the last day of a specified period falls on a Saturday, Sunday, or legal public holiday, the period will be extended until the next working day.

FOIA means the Freedom of Information Act, as amended, 5 U.S.C. 552.

Privacy Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

OGIS means the Office of Government Information Services of the National Archives and Records Administration, which offers FOIA dispute resolution services.

USTR means the Office of the United States Trade Representative.

Subpart B—Freedom of Information Act Policies and Procedures [Reserved]

§§ 2004.1 through 2004.9 [Reserved]

Subpart C—Privacy Act Policies and Procedures [Reserved]

§§ 2004.10 through 2004.29 [Reserved]

Subpart D—Production or Disclosure of USTR Records, Information and Employee Testimony in Legal Proceedings

Authority: 5 U.S.C. 301; 19 U.S.C. 2171(e)(3).

§ 2004.30 Purpose and scope.

(a) *Why are we issuing this rule?* This subpart establishes the procedures USTR will follow when any federal, state or local government court or other

authority seeks production of USTR records or information, or testimony relating to an employee's official duties, in the context of a legal proceeding. Parties seeking records, information or testimony must comply with these requirements when submitting demands or requests to USTR.

(b) *What does this rule cover?* This subpart applies to demands or requests for records, information or testimony in legal proceedings in which USTR is not a named party. It does not apply to: Demands or requests for a USTR employee to testify as to facts or events that are unrelated to his or her official duties or to USTR's functions; FOIA or Privacy Act requests; or Congressional demands or requests for records or testimony.

(c) *Not a waiver.* (1) By providing these policies and procedures, USTR does not waive the sovereign immunity of the United States.

(2) The production of records, information or testimony pursuant to this subpart does not constitute a waiver by USTR of any privilege.

(d) This subpart provides guidance for USTR's internal operations and does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against USTR or the United States.

§ 2004.31 Definitions.

For purposes of this subpart:

Demand means a request, order, subpoena or other demand of a federal, state or local court or other authority for records, information or employee testimony in a legal proceeding in which USTR is not a named party.

Employee means any current or former employee or officer of USTR, including contractors, detailees, interns, and any individual who has served or is serving in any consulting or advisory capacity to USTR, whether formal or informal.

General Counsel means USTR's General Counsel or a person within USTR's Office of General Counsel to whom the General Counsel has delegated authority to act under this subpart.

Legal proceeding means any matter, including all phases of litigation, before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding.

Records or *information* means all documents and materials that are USTR agency records under the FOIA; any original or copy of a record or other property, no matter what media, contained in USTR files; and any other information or materials acquired by a USTR employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, in connection with a legal proceeding, seeking production of records, information or testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations and recorded interviews made by an individual about USTR information in connection with a legal proceeding.

§ 2004.32 Production prohibited unless approved.

(a) *Approval required.* An employee or any other person or entity in possession of records or information may not produce those records or information, or provide any testimony related to the records or information, in response to any demand or request without prior written approval from the General Counsel.

(b) *Penalties.* Any person or entity that fails to comply with this subpart may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current employee also may be subject to administrative or disciplinary proceedings.

§ 2004.33 Factors the General Counsel may consider.

The General Counsel may grant an employee permission to testify regarding USTR matters and to produce records and information in response to a demand or request. Among the relevant factors the General Counsel may consider in making this determination are whether:

(a) The requested records, information or testimony are reasonable in scope, relevant and material to the pending action, and unavailable from other sources such as a non-USTR employee, or a USTR employee other than the employee named.

(b) Production of the records, information or testimony might result in USTR appearing to favor one litigant over another.

(c) USTR has an interest in the decision that may be rendered in the legal proceeding.

(d) Approving the demand or request would assist or hinder USTR in performing statutory duties or unduly burden USTR resources.

(e) The demand or request is unduly burdensome or otherwise inappropriate under the rules of discovery or procedure governing the case or matter in which the demand or request arose.

(f) Production of the records, information or testimony might violate or be inconsistent with a statute, Executive Order, regulation or other legal authority.

(g) Disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege.

(h) Disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure.

(i) Disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(j) Any other appropriate factor.

§ 2004.34 Submitting demands and requests.

(a) *Where do I send a demand or request?* To make a demand or request for records, information or testimony you should write directly to the General Counsel. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your demand or request to *TOUHY@ustr.eop.gov.* The mailing address is General Counsel, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To ensure delivery, you should mark the subject line of your email or your envelope and letter ''Touhy Request.''

(b) *When should I submit it?* You should submit your demand or request at least 45 calendar days in advance of the date on which the records, information or testimony is needed.

(c) *What must be included?* (1) A demand or request must include an affidavit or, if that is not feasible, a clear and concise statement by the party or his or her counsel summarizing the legal and factual issues in the proceeding and explaining how the records, information or testimony will contribute substantially to the resolution of one or more specifically identified issues.

(2) A demand or request for testimony also must include an estimate of the amount of time that the employee will need to devote to the process of testifying (including anticipated travel time and anticipated duration of round trip travel), plus a showing that no document or the testimony of non-USTR persons, including retained experts, could suffice in lieu of the employee's testimony.

(d) *Limits.* The General Counsel will limit any authorization for testimony to the scope of the demand, and the scope of permissible production of records and information to that set forth in the written authorization.

(e) *Failure to meet requirements and exceptions.* USTR may oppose any demand or request that does not meet the requirements set forth in this subpart. The General Counsel may grant exceptions to the requirements in this subpart upon a showing of compelling need, to promote a significant interest of USTR or the United States, or for other good cause.

§ 2004.35 Processing demands and requests.

(a) The General Counsel will review a request or demand to produce or disclose records, information or testimony and determine whether, or under what conditions, to authorize the employee to testify regarding USTR matters or produce records and information. The General Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions on disclosure.

(b) When necessary, the General Counsel will coordinate with the U.S. Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(c) The General Counsel will process demands and requests in the order in which they are received. Absent unusual circumstances and depending on the scope of the demand or request, the General Counsel will respond within 45 calendar days of the date USTR receives all information necessary to evaluate the demand or request.

§ 2004.36 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of USTR employees including, for example, limiting the scope of testimony or requiring the requester and other parties to the legal proceeding to agree that the testimony transcript will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel also may require a copy of the testimony transcript at the requester's expense.

(b) USTR may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this subpart, an employee may testify as to relevant facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee must not:

(1) Disclose classified, confidential or privileged information; or

(2) For a current USTR employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or USTR's mission or functions, unless testimony is provided on behalf of the United States. A former employee can provide expert or opinion testimony where the testimony involves only general expertise gained while employed as a USTR employee.

§ 2004.37 Restrictions that apply to released records and information.

(a) The General Counsel may impose conditions or restrictions on the release of records and information, including requiring the parties to the legal proceeding to obtain a protective order or to execute a confidentiality agreement to limit access and further disclosure. The terms of a protective order or confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements already have been executed, USTR may condition the release of records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, USTR may present original records for examination in response to a demand or request, but the records cannot be marked or altered or presented as evidence or otherwise used in a manner by which they could lose their status as original records. In lieu of original records, certified copies will be presented for evidentiary purposes. (*See* 28 U.S.C. 1733).

§ 2004.38 In the event of an adverse ruling.

(a) Notwithstanding USTR's rejection of a demand or request for records, information or testimony, if a court or other competent authority orders a USTR employee to comply with the demand, the employee promptly must notify the General Counsel of the order, and must respectfully decline to comply, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

(b) To seek reconsideration of USTR's rejection of a demand or request, or of any restrictions on receiving records, information or testimony, a requester must send a petition for reconsideration in accordance with § 2004.34(a) within 10 days of the date of the determination. The petition must contain a clear and concise statement of the basis for the reconsideration with supporting authorities. Determinations about petitions for reconsideration are within the discretion of the United States Trade Representative or his/her designee, and are final.

(c) Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition for reconsideration of a final determination under this section is a prerequisite to judicial review.

§ 2004.39 Fees.

(a) USTR may condition the production of records, information or an employee's appearance on advance payment of reasonable costs, which may include but are not limited to those associated with employee search time, copying, computer usage, and certifications.

(b) Witness fees will include fees, expenses and allowances prescribed by the rules applicable to the particular legal proceeding. If no fees are prescribed, USTR will base fees on the rule of the federal district court closest to the location where the witness will appear. Such fees may include but are not limited to time for preparation, travel and attendance at the legal proceeding.

Janice Kaye,

Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.

[FR Doc. 2016–29875 Filed 12–12–16; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 201, 207, 314, 514, 515, 601, 607, and 1271

[Docket No. FDA–2005–N–0464 (Formerly Docket No. 2005N–0403)]

Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule entitled ''Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs'' that appeared in the **Federal Register** of August 31, 2016 (81 FR 60169). That final rule amended current regulations

concerning who must register establishments and list human drugs, human drugs that are also biological products, and animal drugs. The final rule was published with an incorrect statement in the preamble about the rule's effect on establishments at which investigational drugs are manufactured. This document corrects that error.

DATES: Effective December 13, 2016.

FOR FURTHER INFORMATION CONTACT: David Joy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6254, Silver Spring, MD 20993–0002, 301–796–2242.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 31, 2016 (81 FR 60169), FDA published the final rule ''Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs.'' The final rule published with an incorrect statement in the preamble about the rule's effect on establishments at which investigational drugs are manufactured. Under the amended regulations, manufacturers, repackers, relabelers, or salvagers who manufacture, repack, relabel, or salvage drugs solely for use in research, teaching, or chemical analysis and not for sale are exempt from the establishment registration requirement under 21 CFR 207.13(e) if they do not engage in other activities that require them to register.

In the **Federal Register** of August 31, 2016, in FR Doc. 2016–20471, the following correction is made: On page 60185, in the first column, in the third paragraph under ''*2. When must initial registration information be provided? (§ 207.21),*'' the following sentence is removed: ''Accordingly, an establishment at which an investigational drug is manufactured is subject to the establishment registration requirement.''

Dated: December 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29774 Filed 12–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9796]

RIN 1545–BM94

Treatment of Certain Domestic Entities Disregarded as Separate From Their Owners as Corporations for Purposes of Section 6038A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Internal Revenue Code.

DATES: *Effective date:* These regulations are effective December 13, 2016.

Applicability date: For dates of applicability, see §§ 1.6038A–1(n)(1) and (2) and 301.7701–2(e)(9).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1191. The estimated average annual recordkeeping burden per recordkeeper is 10 hours. The estimated reporting burden is being reported under Form 5472 (OMB #1545–0123).

The collection of information in these final regulations is in §§ 1.6038A–2 and 1.6038A–3. This information will enhance the United States' compliance with international standards of transparency and exchange of information for tax purposes and will strengthen the enforcement of U.S. tax laws. The likely respondents are foreign-owned domestic entities that are disregarded as separate from their owners.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

On May 10, 2016, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the **Federal Register** a notice of proposed rulemaking (REG–127199–15; 81 FR 28784) under sections 6038A and 7701 (the proposed regulations). The proposed regulations would treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Internal Revenue Code. The proposed regulations would have applied to taxable years of the entities described in § 301.7701–2(c)(2)(vi) ending on or after the date that is 12 months after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**.

In addition to generally soliciting comments on all aspects of the proposed rules, the preamble to the proposed regulations specifically requested comments on possible alternative methods for reporting a domestic disregarded entity's transactions in cases in which the foreign owner of the domestic disregarded entity already has an obligation to report the income resulting from those transactions—for example, transactions resulting in income effectively connected with the conduct of a U.S. trade or business.

No written comments on the proposed regulations were received, and no public hearing was requested or held. However, these final regulations reflect a limited number of changes by the Treasury Department and the IRS to the proposed regulations.

First, it was and remains the intent of the Treasury Department and the IRS that the generally applicable exceptions to the requirements of section 6038A should not apply to a domestic disregarded entity that is wholly owned by a foreign person. Accordingly, the proposed regulations provided that the exceptions to the record maintenance requirements in § 1.6038A–1(h) and (i)

for small corporations and *de minimis* transactions would not apply to these entities. The proposed regulations did not address the additional exception provided in § 1.6038A–2(e)(3), under which a reporting corporation is not required to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code), with respect to a related foreign corporation when a U.S. person that controls the related foreign corporation files a Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, containing required information with respect to reportable transactions between the reporting corporation and the related foreign corporation for the taxable year. Similarly, the proposed regulations did not address the additional exception provided in § 1.6038A–2(e)(4), under which a reporting corporation is not required to file Form 5472 with respect to a related foreign corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation. Upon final consideration of the proposed regulations, the Treasury Department and the IRS have concluded that, consistent with the scope and intent of the proposed regulations, the reporting requirements of the proposed regulations should apply without regard to the exceptions generally applicable under § 1.6038A–2(e)(3) and (4). The exceptions in § 1.6038A–2(e)(3) and (4) are revised accordingly in the final regulations.

Second, to facilitate entities' compliance with the requirements of section 6038A, including the obligation of reporting corporations to file Form 5472, the final regulations provide that these entities have the same taxable year as their foreign owner if the foreign owner has a U.S. return filing obligation. If the foreign owner has no U.S. return filing obligation, then for ease of tax administration, the final regulations provide that the taxable year of these entities is the calendar year unless otherwise provided in forms, instructions, or published guidance.

Third, the Treasury Department and the IRS have concluded that for ease of administration, these regulations should apply to taxable years of entities beginning on or after January 1, 2017, and ending on or after December 13, 2017. The proposed regulations would have applied to taxable years ending on or after the date that is 12 months after the date of publication of the final regulations in the **Federal Register**, without regard to the date on which the taxable year began. This Treasury decision adopts the proposed regulations as so amended and with other minor clarifications for readability.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will primarily affect a small number of foreign-owned domestic entities that do not themselves otherwise have a U.S. return filing requirement, and that the requirement to file a return for these entities will not impose a significant burden on them. Pursuant to section 7805(f), the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities.

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entries for §§ 1.6038A–1 and 1.6038A–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6038A–1 also issued under 26 U.S.C. 6001.

Section 1.6038A–2 also issued under 26 U.S.C. 6001.

* * * * *

■ **Par. 2.** Section 1.6038A–0 is amended by adding an entry for § 1.6038A–2(b)(9) to read as follows:

§ 1.6038A–0 Table of contents.

* * * * *

§ 1.6038A–2 Requirement of return.

* * * * *

(b) * * *

(9) Examples.

* * * * *

■ **Par. 3.** Section 1.6038A–1 is amended as follows:

■ 1. Add a sentence at the end of paragraph (c)(1).

■ 2. Revise the first sentence of paragraph (h).

■ 3. Revsie the first sentence of paragraph (i)(1).

■ 4. Add a sentence at the end of paragraph (n)(1).

■ 5. Add a sentence at the end of paragraph (n)(2).

The additions and revisions read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(c) * * *

(1) * * * A domestic business entity that is wholly owned by one foreign person and that is otherwise classified under § 301.7701–3(b)(1)(ii) of this chapter as disregarded as an entity separate from its owner is treated as an entity separate from its owner and classified as a domestic corporation for purposes of section 6038A. *See* § 301.7701–2(c)(2)(vi) of this chapter.

* * * * *

(h) * * * A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) that has less than $10,000,000 in U.S. gross receipts for a taxable year is not subject to §§ 1.6038A–3 and 1.6038A–5 for that taxable year.* * *

(i) * * *

(1) * * * A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) is not subject to §§ 1.6038A–3 and 1.6038A–5 for any taxable year in which the aggregate value of all gross payments it makes to and receives from foreign related parties with respect to related party transactions (including monetary

consideration, nonmonetary consideration, and the value of transactions involving less than full consideration) is not more than $5,000,000 and is less than 10 percent of its U.S. gross income. * * *

* * * * *

(n) * * *

(1) * * * However, § 1.6038A–1 as it applies to entities that are reporting corporations as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter applies to taxable years of such reporting corporations beginning after December 31, 2016, and ending on or after December 13, 2017.

(2) * * * Section 1.6038A–2 as it applies to entities that are reporting corporations as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter applies to taxable years of such reporting corporations beginning after December 31, 2016, and ending on or after December 13, 2017.

* * * * *

■ **Par. 4.** Section 1.6038A–2 is amended as follows:

■ 1. Revise the second sentence of paragraph (a)(2).

■ 2. Revise paragraph (b)(3)(vii).

■ 3. Remove the word ''and'' at the end of paragraph (b)(3)(ix).

■ 4. Remove the undesignated paragraph following paragraph (b)(3)(x).

■ 5. Remove the period at the end of paragraph (b)(3)(x) and add ''; and'' in its place.

■ 6. Add paragraphs (b)(3)(xi) and (b)(9).

■ 7. Add a sentence at the end of paragraph (d).

■ 8. Revise the first sentence of paragraph (e)(3).

■ 9. Revise paragraph (e)(4).

The additions and revisions read as follows:

§ 1.6038A–2 Requirements of return.

(a) * * *

(2) * * * However, if neither party to the transaction is a United States person as defined in section 7701(a)(30) (which, for purposes of section 6038A, includes an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) and the transaction—

* * * * *

(b) * * *

(3) * * *

(vii) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (b)(3) that arise and are collected in full in the ordinary course of business), to be reported as monthly averages or outstanding balances at the beginning and end of the taxable year, as the form shall prescribe;

* * * * *

(xi) With respect to an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter, any other transaction as defined by § 1.482–1(i)(7), such as amounts paid or received in connection with the formation, dissolution, acquisition and disposition of the entity, including contributions to and distributions from the entity.

* * * * *

(9) *Examples.* The following examples illustrate the application of paragraph (b)(3) of this section:

Example 1. (i) In year 1, W, a foreign corporation, forms and contributes assets to X, a domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 2, W contributes funds to X. In year 3, X makes a payment to W. In year 4, X, in liquidation, distributes its assets to W.

(ii) In accordance with § 301.7701–3(b)(1)(ii) of this chapter, X is disregarded as an entity separate from W. In accordance with § 301.7701–2(c)(2)(vi) of this chapter, X is treated as an entity separate from W and classified as a domestic corporation for purposes of section 6038A. In accordance with paragraphs (a)(2) and (b)(3) of this section, each of the transactions in years 1 through 4 is a reportable transaction with respect to X. Therefore, X has a section 6038A reporting and record maintenance requirement for each of those years.

Example 2. (i) The facts are the same as in *Example 1* of this paragraph (b)(9) except that, in year 1, W also forms and contributes assets to Y, another domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 1, X and Y form and contribute assets to Z, another domestic limited liability company that does not elect to be treated as a corporation under § 301.7701–3(c) of this chapter. In year 2, X transfers funds to Z. In year 3, Z makes a payment to Y. In year 4, Z distributes its assets to X and Y in liquidation.

(ii) In accordance with § 301.7701–3(b)(1)(ii) of this chapter, Y and Z are disregarded as entities separate from each other, W, and X. In accordance with § 301.7701–2(c)(2)(vi) of this chapter, Y, Z and X are treated as entities separate from each other and W, and are classified as domestic corporations for purposes of section 6038A. In accordance with paragraph (b)(3) of this section, each of the transactions in years 1 through 4 involving Z is a reportable transaction with respect to Z. Similarly, W's contribution to Y and Y's contribution to Z in year 1, the payment to Y in year 3, and the distribution to Y in year 4 are reportable transactions with respect to Y. Moreover, X's contribution to Z in Year 1, X's funds transfer to Z in year 2, and the distribution to X in year 4 are reportable transactions with respect to X. Therefore, Z has a section 6038A reporting and record maintenance requirement for years 1 through 4; Y has a section 6038A reporting and record maintenance requirement for years 1, 3, and 4; and X has a section 6038A reporting and record maintenance requirement in years 1, 2, and 4 in addition to its section 6038A reporting and record maintenance described in *Example 1* of this paragraph (b)(9).

* * * * *

(d) * * * In the case of an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter, Form 5472 must be filed at such time and in such manner as the Commissioner may prescribe in forms or instructions.

(e) * * *

(3) * * * A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) is not required to make a return of information on Form 5472 with respect to a related foreign corporation for a taxable year for which a U.S. person that controls the foreign related corporation makes a return of information on Form 5471 that is required under section 6038 and this section, if that return contains information required under § 1.6038–2(f)(11) with respect to the reportable transactions between the reporting corporation and the related corporation for that taxable year.* * *

(4) *Transactions with a foreign sales corporation.* A reporting corporation (other than an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) is not required to make a return of information on Form 5472 with respect to a related corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 6.** Section 301.7701–2 is amended by revising the last sentence of paragraph (a) and adding paragraphs (c)(2)(vi) and (e)(9) to read as follows:

§ 301.7701–2 Business entities; definitions.

(a) * * * But see paragraphs (c)(2)(iii) through (vi) of this section for special rules that apply to an eligible entity that

is otherwise disregarded as an entity separate from its owner.

* * * * *

(c) * * *

(2) * * *

(vi) *Special rule for reporting under section 6038A*—(A) *In general.* An entity that is disregarded as an entity separate from its owner for any purpose under this section is treated as an entity separate from its owner and classified as a corporation for purposes of section 6038A if—

(*1*) The entity is a domestic entity; and

(*2*) One foreign person has direct or indirect sole ownership of the entity.

(B) *Definitions*—(*1*) *Indirect sole ownership.* For purposes of paragraph (c)(2)(vi)(A)(*2*) of this section, indirect sole ownership means ownership by one person entirely through one or more other entities disregarded as entities separate from their owners or through one or more grantor trusts, regardless of whether any such disregarded entity or grantor trust is domestic or foreign.

(*2*) *Entity disregarded as separate from its owner.* For purposes of paragraph (c)(2)(vi)(B)(*1*) of this section, an entity disregarded as an entity separate from its owner is an entity described in paragraph (c)(2)(i) of this section.

(*3*) *Grantor trust.* For purposes of paragraph (c)(2)(vi)(B)(*1*) of this section, a grantor trust is any portion of a trust that is treated as owned by the grantor or another person under subpart E of subchapter J of chapter 1 of the Code.

(C) *Taxable year.* The taxable year of an entity classified as a corporation for section 6038A purposes pursuant to paragraph (c)(2)(vi)(A) of this section is—

(*1*) The same as the taxable year of the foreign person described in paragraph (c)(2)(vi)(A)(*2*) of this section, if that foreign person has a U.S. income tax or information return filing obligation for its taxable year; or

(*2*) The calendar year, if paragraph (c)(2)(vi)(C)(*1*) of this section does not apply, unless otherwise provided in forms, instructions, or published guidance.

* * * * *

(e) * * *

(9) *Reporting required under section 6038A.* Paragraph (c)(2)(vi) of this section applies to taxable years of entities beginning after December 31, 2016, and ending on or after December 13, 2017.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: November 15, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–29641 Filed 12–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 22

RIN 1505–AC45

Regulation Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance From the Department of the Treasury

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule provides for the enforcement of Title VI of the Civil Rights Act of 1964, as amended (''Title VI'') to the end that no person in the United States shall on the grounds of race, color, or national origin be denied participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives federal financial assistance from the Department of the Treasury. The promulgation of this final regulation will provide guidance to the Department's recipients of federal financial assistance in complying with the provisions of Title VI and will also promote consistent and appropriate enforcement of Title VI by the Department's components. Through this final rule, the Department also notifies beneficiaries of its programs offering financial assistance of the protections against discrimination based on race, color, and national origin.

DATES: Effective January 12, 2017.

FOR FURTHER INFORMATION CONTACT: Mariam G. Harvey, Director, Office of Civil Rights and Diversity, Department of the Treasury, (202) 622–0316 (voice), by mail to Mariam G. Harvey, Director, Office of Civil Rights and Diversity, 1500 Pennsylvania Avenue NW., Washington, DC 20220; or facsimile (202) 622–0367.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

The purpose of this final rule is to provide for the enforcement of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, *et seq.*), as it applies to programs or activities receiving assistance from the Department of the Treasury. Specifically, the statute states that ''[n]o person in the United States shall, on the grounds of race, color, or national origin be denied participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives federal financial assistance.'' 42 U.S.C. 2000d. Each federal agency subject to Title VI is required to issue regulations implementing Title VI. 28 CFR 42.403. The Department of the Treasury is issuing Title VI regulations for the first time. Under Treasury's Title VI implementing regulations, Treasury-funded programs are prohibited from taking acts, including permitting actions, that discriminate based on the statutorily protected classes. The regulations further provide for Treasury procedures to ensure compliance, including a hearing procedure.

Prior to this rule, the Department was requiring recipients of financial assistance to sign assurances of compliance with Title VI. With the issuance of this final rule, the Department will continue to require assurance of compliance and strengthen its civil rights compliance requirements.

II. Background

A. Treasury's July 13, 2015, Proposed Rule

On July 13, 2015, at 80 FR 39977, Treasury published its proposed rule implementing Title VI. Each federal agency subject to Title VI is required to issue regulations implementing Title VI. 42 U.S.C. 2000d to 2000d–7; 28 CFR 42.403. The comment period for the proposed rule ended on September 11, 2015.

III. Public Comments and Treasury's Response

A. The Public Comments Generally

The public posted six comments to the Notice of Proposed Rulemaking implementing Title VI. Three comments were from public interest groups. One comment was from a city government office. Two individuals also commented, but one of the comments was nonresponsive. All public comments can be viewed at *http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS%252BPR;D=TREAS-DO-2015-0006.*

The comments can be grouped in two main subjects: Data collection and coverage of Low Income Housing Credits (LIHTCs).

B. Specific Public Comments

1. Burden of Data Collection

Comment: A commenter disagreed with the collection of the ethnicity of the taxpayers receiving tax preparation services through Volunteer Income Tax Assistance (VITA), stating that the information will not help prove or disprove discrimination. The commenter opined that the best data are gained from the feedback received from bureau employees and from the taxpayers who report having issues at a VITA site. The commenter favors the current compliance practices (displaying a poster, providing information about where to file a complaint, and unannounced site visits) as a far better method for monitoring compliance with nondiscrimination regulations.

Treasury Response: Treasury agrees that the practices in place are useful, and they will continue under the final rule. Treasury disagrees with this commenter's view on data collection, however, because it is required for the appropriate enforcement of Title VI. The coordination regulations issued by the Department of Justice (DOJ) under the authority of Executive Order 12250 require agencies to ''provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit the effective enforcement of Title VI.'' 28 CFR 42.406(a). Collecting information about the race and ethnicity of program beneficiaries will help the Department ensure its programs that offer financial assistance are providing equal opportunity to the eligible beneficiaries, regardless of their race and national origin. The data will also allow the Department to investigate discrimination complaints alleging a violation of Title VI adequately.

Comment: A commenter suggests the grantees should have to supplement local data and/or common knowledge regarding the actual neighborhoods that exist within each program jurisdiction, to enhance the utility of the information required to be maintained for assessing the success of Title VI enforcement.

Treasury Response: The Department plans to issue guidelines regarding data collection in accordance with the requirements in 28 CFR 42.406. The Department will collect data sufficient for the effective enforcement of Title VI. The government-wide coordination regulations state that where an agency determines that the collection of additional data, such as demographic maps, the racial composition of affected neighborhoods, or census data, is necessary or appropriate, the agency shall specify, in its guidelines or in other directives, the need to submit such data. The Department can collect such additional data only to the extent that it is readily available or can be compiled with reasonable effort.

Comment: A commenter recommends as a way to minimize the burden of complying with the proposed information collection, Treasury implement a standard form for reporting compliance to agency officials (referencing § 22.6 of the proposed rule that obligates recipients to submit compliance reports). A standard form will also promote consistency and appropriate enforcement of Title VI by the Department's components.

Treasury Response: Treasury agrees that a standard form for reporting compliance information will assist its recipients and promote consistency across the Department's components. The Department will issue guidance to its recipients and agency officials regarding data collection as required by the government-wide coordination regulations, and will consider making a data collection form part of the upcoming guidance.

Comment: A commenter asks what is to be gleaned from the data if a high number of participants opt not to answer the racial and ethnic data question. The commenter wanted to know if recipients will be asked to guess the taxpayers' ethnic backgrounds.

Treasury Response: The Department will provide guidance to its recipients regarding data collection as required by the government-wide coordination regulations, and in accordance with Office of Management and Budget (OMB) guidance, including OMB Statistical Policy Directive No. 15, as revised; and OMB Bulletin No. 00–02. Self-identification is the preferred method of data collection about race and ethnicity. OMB guidance states that respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity. Respondent self-identification should be used to the greatest extent possible, but observer identification is more practical in some data collection systems.

Comment: A commenter asked if the Department will assume that if the vast majority of beneficiaries receiving benefits at a site belong to a particular ethnic background discrimination has occurred.

Treasury Response: Data showing the race and ethnicity of the program beneficiaries are relevant to determine compliance with the requirements of Title VI by the recipients of Treasury financial assistance. If the Department finds during a compliance review or investigation that a protected group in the population of the service area is not participating in the program, the Department will look at the entire record to determine the reason for the lack of participation, and whether corrective actions are needed. The Department will discuss issues of noncompliance with its recipients with the goal of achieving voluntary compliance.

Comment: Two commenters were concerned that increasing the burden on recipients of the VITA program will result in further reduction in the number of volunteers. The commenters stated they oppose any changes created by the rule that would result in additional burden to recipients of the VITA program by requiring additional documentation, reporting, and records retention. One commenter supports the information collection and is in agreement that the information collection does not subject recipients to any new substantive obligations, and that the economic burden associated with the collection of information will not significantly affect small governments or entities.

Treasury Response: The Department believes that any burden created by the requirements of the new rule, including the collection of data, is reasonable and justified by the goal of ensuring equal opportunity and nondiscrimination in the financial assistance programs. In the case of the VITA program, the recipients are already collecting data from the beneficiaries using the intake forms required by the program.

2. Inclusion of Low-Income Housing Credits in the Covered Programs

Comments: Three commenters stated that low-income housing credits (LIHTCs) should be included in the list of programs in the Appendix. These commenters stated that tax credits like LIHTCs provide a subsidy to achieve a specific public benefit and are federal financial assistance (FFA) for the purposes of Title VI. The three commenters stressed the important role LIHTCs play in the development of affordable housing, and stated that listing LIHTCs as FFA would protect millions of low-income individuals from housing discrimination.

Treasury Response: We agree with commenters regarding the importance of protecting the civil rights of individuals living in properties developed using LIHTCs. Other federal civil rights statutes, including the Fair Housing Act, 42 U.S.C. 3601 *et seq.* (FHA), prohibit discrimination on the bases of race, color, religion, sex, national origin, familial status, and disability, and apply

to LIHTC properties. * * * The FHA prohibits both intentional discrimination and practices that have an unjustified discriminatory effect. Treasury's commitment to ensuring that developers, owners, operators, and managers of LIHTC properties do not discriminate, consistent with tax regulations that require LIHTC buildings to comply with fair-housing requirements, includes a 2000 Memorandum of Understanding (MOU) with the Department of Justice and the Department of Housing and Urban Development. This MOU is aimed at ensuring that developers, owners, operators, and managers of LIHTC properties comply with the FHA. *See https://www.irs.gov/businesses/small-businesses-self-employed/exhibit-13-2.* Among other provisions, the MOU requires the IRS to notify owners of LIHTC properties facing allegations of housing discrimination that a finding of a violation of the FHA could result in a loss of LIHTCs. This MOU demonstrates Treasury's commitment to ensuring that LIHTC housing providers do not discriminate in violation of the FHA.

The comments also stated that Title VI coverage was important to ensure that state agencies allocate housing credit dollar amounts (that is, the eligibility to earn LIHTCs) among proposed projects consistent with civil rights goals. These state agencies allocating housing credit dollar amounts may also receive grants or other forms of FFA from another federal agency, such as the Department of Housing and Urban Development, which would result in Title VI coverage for all of the state agency's operations. Thus, if an individual or organization believes that a state agency is allocating housing credit dollar amounts in a manner inconsistent with the requirements of Title VI, that individual or organization may determine whether the state agency is otherwise receiving FFA (which may include consulting *www.usaspending.gov*) and may file a complaint with the appropriate federal agency. Civil rights protections thereby cover LIHTC allocations and properties receiving LIHTCs regardless of whether the credits themselves constitute FFA as a legal matter.

While tax credits are generally not considered FFA, we recognize that, as the commenters have pointed out, some aspects of LIHTCs resemble programs that constitute FFA. Though we are not including LIHTCs in the Appendix, we emphasize that the Appendix does not purport to be exhaustive, and the absence of a program or activity from the list does not by such absence limit the applicability of Title VI to that program or activity.

IV. Procedural Requirements

Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

The Department certifies that no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. Furthermore, these regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments.

The Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these Title VI regulations and by approving, certifies that these regulations will not have a significant economic impact on a substantial number of small entities because all of the entities that are subject to these regulations are already subject to Title VI, and some entities already are subject to the Title VI regulations of other agencies.

This rule is not a ''major rule,'' nor will it have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on federal funding recipients. All recipients of federal funding have been bound by Title VI's antidiscrimination provision since 1964. Individual participants in the recipients' programs have thus long had the right to be free from discrimination on the basis of race, color, and national origin. This rule merely ensures that the Department and its components have regulations implementing this statute.

Executive Order 13132

These Title VI regulations will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These Title VI regulations do not subject recipients of federal funding to any new substantive obligations because all recipients of federal funding have been bound by Title VI's antidiscrimination provision since 1964. Moreover, these Title VI regulations are required by statute; Congress specifically directed federal agencies to adopt implementing regulations when Title VI was enacted. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. No further action is required.

Executive Order 12250

The Attorney General has reviewed and approved this rule pursuant to Executive Order 12250.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid control number issued by the Office of Management and Budget (OMB). The information collections contained in this rule will be submitted and approved by OMB in connection with information collections for the applicable programs listed in appendix A to the regulations.

The information collections contained in this rule are found in §§ 22.5 (reporting), 22.6 (reporting and recordkeeping), 22.7 (reporting), and 22.10 (reporting).

The OMB control numbers that will be revised include the following:

Bureau/office	Program or activity	OMB Control Nos.
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Community Development Financial Institutions (CDFI) Fund—Financial Component.	1559–0021

Bureau/office	Program or activity	OMB Control Nos.
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Community Development Financial Institutions (CDFI) Fund—Technical Assistance Component.	1559–0021
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Bank Enterprise Award Program	1559–0032, 1559–0005
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Native American Community Development Financial Institutions (CDFI) Assistance Program, Financial Assistance (FA) Awards.	1559–0021
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Native American Community Development Financial Institutions (CDFI) Assistance (NACA) Program, Technical Assistance Grants.	1559–0021
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Community Development Financial Institutions Fund, Capital Magnet Fund.	1559–0043
Departmental Offices, Office of Domestic Finance, Office of Small Business, Community Development, and Housing Policy.	State Small Business Credit Initiative	1505–0227
Internal Revenue Service	Tax Counseling for the Elderly Grant Program	1545–2222
Internal Revenue Service	Volunteer Income Tax Assistance Program	1545–2222
Internal Revenue Service	Volunteer Income Tax Assistance Grant Program	1545–2222
Internal Revenue Service	Low Income Taxpayer Clinic Grant Program	1545–1648
United States Mint	U.S. Commemorative Coin Programs	TBD
Departmental Offices, Treasury Executive Office for Asset Forfeiture.	Equitable sharing program (transfer of forfeited property to state and local law enforcement agencies).	1505–0152
Departmental Offices, Office of the Fiscal Assistant Secretary.	Grants under the RESTORE Act's Direct Component and Centers of Excellence program and supplemental compliance responsibilities for its Comprehensive Plan and Spill Impact Components..	1505–0250

List of Subjects in 31 CFR Part 22

Administrative practice and procedure, Claims, Disability benefits, Government contracts, Nondiscrimination.

■ For the reasons discussed in the preamble, the Department amends 31 CFR by adding part 22 to read as follows:

PART 22—NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF THE TREASURY

Sec.

22.1 Purpose.
22.2 Application.
22.3 Definitions.
22.4 Discrimination prohibited.
22.5 Assurances required.
22.6 Compliance information.
22.7 Conduct of investigations.
22.8 Procedure for effecting compliance.
22.9 Hearings.
22.10 Decisions and notices.
22.11 Judicial review.
22.12 Effect on other regulations, forms, and instructions.
Appendix A to Part 22—Activities to Which This Part Applies

Authority: 42 U.S.C. 2000d–2000d–7.

§ 22.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (Title VI) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of the Treasury.

§ 22.2 Application.

(a) This part applies to any program for which federal financial assistance is authorized under a law administered by the Department, including the types of federal financial assistance listed in Appendix A to this part. It also applies to money paid, property transferred, or other federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any federal financial assistance by way of insurance or guaranty contracts;

(2) Any assistance to any individual who is the ultimate beneficiary; or

(3) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 22.4(c). The fact that a type of federal financial assistance is not listed in Appendix A to this part shall not mean, if Title VI is otherwise applicable, that a program is not covered. Other types of federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

§ 22.3 Definitions.

As used in this part:

Applicant means a person who submits an application, request, or plan required to be approved by an official of the Department of the Treasury, or designee thereof, or by a primary recipient, as a condition to eligibility for federal financial assistance, and *application* means such an application, request, or plan.

Designated agency official means the Assistant Secretary for Management and his or her designee.

Facility includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

Federal financial assistance includes:

(1) Grants and loans of federal funds;

(2) The grant or donation of federal property and interests in property;

(3) The detail of federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in

recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

Primary recipient means any recipient that is authorized or required to extend federal financial assistance to another recipient.

Program or activity and *program* mean all of the operations of any entity described in the following paragraphs (1) through (4) of this definition, any part of which is extended federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such state or local government that distributes such assistance and each such department or agency to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which federal financial assistance is extended, in the case of any other corporation, partnership, private organization or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in the preceding paragraph (1), (2), or (3) of this definition.

Recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

§ 22.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise to afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as a volunteer or as an employee, but only to the extent set forth in paragraph (c) of this section); or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, use criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, may take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the federal financial assistance to a program to which this part applies is to provide employment, a recipient subject to this

part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, and use of facilities). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

(2) Where a primary objective of the federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

§ 22.5 Assurances required.

(a) *General.* Either at the application stage or the award stage, federal agencies must ensure that applications for federal financial assistance or awards of federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each program or activity operated by the applicant or recipient and to which these Title VI regulations apply will be operated in compliance with these Title VI regulations.

(b) *Duration of obligation.* (1) In the case where the federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which federal financial assistance is extended to the program.

(2) In the case where federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the federal government is involved, but property is acquired or improved with federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the federal government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the designated agency official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the designated agency official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as the designated agency official deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(c) *Continuing federal financial assistance.* Every application by a State or a State agency for continuing federal financial assistance to which this part applies (including the types of federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any federal financial assistance pursuant to the application:

(1) Contain, be accompanied by, or be covered by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part; and

(2) Provide, be accompanied by, or be covered by provision for such methods of administration for the program as are found by the designated agency official to give reasonable guarantee that the applicant and all recipients of federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

(d) *Assurance from institutions.* (1) In the case of any application for federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training projects, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

(e) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable federal statutes relating to nondiscrimination. This includes but is not limited to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

§ 22.6 Compliance information.

(a) *Cooperation and assistance.* The designated Agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to

recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the designated Agency official timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the designated Agency official may determine to be necessary to enable the designated Agency official to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the designated Agency official racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) *Access to sources of information.* Each recipient shall permit access by the designated Agency official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives federal financial assistance, and make such information available to them in such manner, as the designated Agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title VI and this part.

§ 22.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The designated Agency official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes that he or she, or any specific class of persons, has been subjected to discrimination prohibited by this part may by himself or herself, or by a representative, file with the designated Agency official a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the designated Agency official.

(c) *Investigations.* The designated Agency official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the designated Agency official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 22.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated Agency official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of Title VI or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 22.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Civil Rights Act of 1964), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 22.5.* If an applicant fails or refuses to furnish an assurance required under § 22.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of paragraph (c) of this section. The Agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to § 22.12, the Agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue federal financial assistance shall become effective until:

(i) The designated Agency official has advised the applicant or recipient of the applicant's or recipient's failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(iii) The action has been approved by the designated Agency official pursuant to § 22.10(e); and

(iv) The expiration of 30 days after the designated Agency official has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI by any other means authorized by law shall be taken by the Department of the Treasury until:

(1) The designated Agency official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 22.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 22.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of Title VI and § 22.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department of the Treasury component administering the program, at a time fixed by the designated Agency official unless the designated Agency official determines that the convenience of the applicant or recipient or of the Agency requires that another place be selected. Hearings shall be held before the designated Agency official, or at designated Agency official's discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the designated Agency official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more federal statutes, authorities, or other means by which federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other federal departments or agencies issued under Title VI, the designated Agency official may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 22.10.

§ 22.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the designated agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the designated Agency official the applicant's or recipient's exceptions to the initial decision, with the reasons therefor. In the absence of exceptions, the designated Agency official may, on his or her own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that the designated Agency official will review the decision. Upon the filing of such exceptions or of notice of review, the designated Agency official shall review the initial decision and issue his or her own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the designated Agency official.

(b) *Decisions on record or review by the designated Agency official.* Whenever a record is certified to the designated Agency official for decision or he or she reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the designated Agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with the designated Agency official briefs or other written statements of its contentions, and a written copy of the final decision of the designated Agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 22.9, a decision shall be made by the designated Agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the designated Agency official shall set forth his or her ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by designated Agency official.* Any final decision by an official of the Agency, other than the designated Agency official personally, which provides for the suspension or termination of, or the refusal to grant or continue federal financial assistance, or the imposition of any other sanction available under this part or Title VI, shall promptly be transmitted to the designated Agency official personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title VI and this part, including provisions designed to assure that no federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the designated Agency official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated Agency official to restore fully its eligibility to receive federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated Agency official determines that those requirements have been satisfied, he or she shall restore such eligibility.

(3) If the designated Agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the designated Agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 22.11 Judicial review.

Action taken pursuant to section 602 of the Title VI is subject to judicial review as provided in section 603 of the Title VI.

§ 22.12 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department of the Treasury which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue federal financial assistance to any applicant for a recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder; or

(2) Any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The designated Agency official shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which the designated Agency official is responsible.

(c) *Supervision and coordination.* The designated Agency official may from time to time assign to officials of the Agency, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI and this part (other than responsibility for final decision as provided in § 22.10), including the achievement of effective coordination and maximum uniformity within the Agency and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the designated Agency official of the Department.

Appendix A to Part 22—Activities to Which This Part Applies

Note: Failure to list a type of federal assistance in this appendix A shall not mean, if Title VI is otherwise applicable, that a program is not covered.

Component	Program or activity	Authority
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Community Development Financial Institutions Fund—Financial Component.	Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4701 *et seq.*
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Community Development Financial Institutions Fund—Technical Assistance Component.	Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4701 *et seq.*

Component	Program or activity	Authority
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Bank Enterprise Award Program	Riegle Community Development and Regulatory Improvement Act of 1994 sec. 114, 12 U.S.C. 4713.
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Native American Community Development Financial Institutions Assistance Program, Financial Assistance (FA) Awards.	Riegle Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. 4701 *et seq.*
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Native American Community Development Financial Institutions Assistance (NACA) Program, Technical Assistance Grants.	Riegle Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. 4701 *et seq.*
Departmental Offices, Office of Domestic Finance, Office of Financial Institutions.	Community Development Financial Institutions Fund, Capital Magnet Fund.	Housing and Economic Recovery Act of 2008 sec. 1339, 12 U.S.C. 4569.
Departmental Offices, Office of Domestic Finance, Office of Small Business, Community Development, and Housing Policy.	State Small Business Credit Initiative	Small Business Jobs Act of 2010, 12 U.S.C. 5701 *et seq.*
Internal Revenue Service	Tax Counseling for the Elderly Grant Program	Revenue Act of 1978 sec. 163, Public Law 95–600, 92 Stat 2763, 2810–2811.
Internal Revenue Service	Volunteer Income Tax Assistance Program	Tax Reform Act of 1969, Public Law 91–172, 83 Stat. 487.
Internal Revenue Service	Volunteer Income Tax Assistance Grant Program.	Consolidated Appropriations Act, Public Law 110–161, 121 Stat. 1844, 1975–76 (2007).
Internal Revenue Service	Low Income Taxpayer Clinic Grant Program	Internal Revenue Service Restructuring and Reform Act of 1998 sec. 3601, 26 U.S.C. 7526.
United States Mint	U.S. Commemorative Coin Programs	Specific acts of Congress that authorize United States commemorative coin and medal programs provide assistance. *See, e.g.,* the Louis Braille Bicentennial—Braille Literacy Commemorative Coin Act, Public Law 109–247 (2006); the Boy Scouts of America Centennial Commemorative Coin Act, Public Law 110–363 (2008); the American Veterans Disabled for Life Commemorative Coin Act, Public Law 110–277 (2008); and the National September 11 Memorial & Museum Commemorative Medal Act of 2010, Public Law 111–221 (2010).
Departmental Offices, Treasury Executive Office for Asset Forfeiture.	Equitable sharing program (transfer of forfeited property to state and local law enforcement agencies).	18 U.S.C. 981(e)(2); 21 U.S.C. 881(e)(1)(A); 31 U.S.C. 9703.
Various Treasury Bureaus and Offices (including the Internal Revenue Service).	Unreimbursed detail of Federal Employees through the Intergovernmental Personnel Act.	5 U.S.C. 3371 through 3376.
Departmental Offices, Office of the Fiscal Assistant Secretary.	Grants under the RESTORE Act's Direct Component and Centers of Excellence program and supplemental compliance responsibilities for its Comprehensive Plan and Spill Impact Components.	Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, Public Law 112–141.

Kody Kinsley,

Assistant Secretary for Management.

[FR Doc. 2016–29629 Filed 12–12–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1045]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the upper deck and lower deck of the Steel Bridge across the Willamette River, mile 12.1, at Portland, OR. The deviation is necessary to allow work crews to upgrade the electrical power and controls system. This deviation allows both upper and lower spans of the Steel Bridge to remain in the closed-to-navigation position to allow for the safe replacement of bridge operating equipment.

DATES: This deviation is effective from 5 a.m. on January 9, 2017 to 11:59 p.m. on January 18, 2017.

ADDRESSES: The docket for this deviation, USCG–2016–1045 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: Union Pacific Railroad Company (UPRR) has requested a temporary deviation from the operating schedule for the Steel Bridge across the Willamette River, at mile 12.1, at Portland, OR. The deviation is necessary to accommodate work crews to conduct timely bridge equipment upgrades and replacement. The Steel Bridge is a double-deck lift bridge with a lower lift deck and an

upper lift deck which operate independent of each other. To facilitate this event, the upper deck and the lower deck will remain in closed-to-navigation position. When both decks are in the closed-to-navigation position, the bridge provides 26 feet of vertical clearance above Columbia River Datum 0.0. The deviation period is from 5 a.m. on January 9, 2017 to 11:59 p.m. on January 18, 2017. The normal operating schedule for the Steel Bridge is in accordance with 33 CFR 117.897(c)(3)(ii).

Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will not be able to open for emergencies, and there is no immediate alternate route for vessels to pass. UPRR has conducted a detailed public outreach for this ten day closure of both decks on the Steel Bridge to Multnomah County, and mariners that transit on the river. The Coast Guard has not received any objections to this temporary deviation from the operating schedule. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 7, 2016.

Steven M Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–29775 Filed 12–12–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1043]

Drawbridge Operation Regulation; Columbia River, Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railroad Bridge (Kennewick-Pasco Railroad Bridge) across the Columbia River, mile 328, at Kennewick, WA. This deviation is necessary to accommodate maintenance to replace a lift motor and install span controls. This deviation allows the bridge to remain in the closed position during installation activities.

DATES: This deviation is effective from 8 a.m. on January 9, 2017 to 8 p.m. on January 20, 2017.

ADDRESSES: The docket for this deviation, USCG–2016–1043 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: BNSF requested that the Burlington Northern Santa Fe (BNSF) Railroad Bridge (Kennewick-Pasco Railroad Bridge) across the Columbia River, mile 328, remain closed to vessel traffic to replace a lift motor and install span controls. The Kennewick-Pasco Railroad Bridge provides 18 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. The current operations for the bridge is in 33 CFR 117.1035. This deviation allows the span of this bridge to remain in the closed-to-navigation position, and need not open for maritime traffic from 8 a.m. on January 9, 2017 to 8 p.m. on January 20, 2017. These dates coincide with the U.S. Army Corps of Engineers schedule closures of the Columbia River navigation locks. The bridge shall operate in accordance to 33 CFR 117.1035 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft including cabin cruisers and sailing vessels.

Vessels able to pass through the bridge in the closed position may do so at anytime. During the first week of the installation period, the span of the bridge will not be able to open for maritime emergencies; however, the span may be opened during the second week of installation work for maritime emergencies, but any emergency opening will necessitate a time extension to the approved dates. No immediate alternate route for vessels to pass is available on this part of the river.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 7, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–29809 Filed 12–12–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0825]

RIN 1625–AA00

Safety Zone; United Illuminating Company Housatonic River Crossing Project; Housatonic River, Milford and Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Housatonic River near Milford and Stratford, CT. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the United Illuminating Company Housatonic River Crossing Project. This regulation prohibits entry of vessels or people into the safety zone unless authorized by the Captain of the Port Sector Long Island Sound.

DATES: This rule is effective without actual notice from December 13, 2016 through December 21, 2016. For the purposes of enforcement, actual notice will be used from November 29, 2016, through December 13, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0825 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Jay TerVeen, Prevention Department, U.S. Coast Guard Sector Long Island Sound, telephone (203) 468–4446, email *Jay.C.TerVeen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LIS Long Island Sound
NPRM Notice of Proposed Rulemaking
NAD 83 North American Datum 1983

II. Background Information and Regulatory History

On August 25, 2016, United Illuminating Company notified the Coast Guard that it will conduct a project involving the installation of new electrical transmission cables over the Housatonic River near Stratford and Milford, CT. The project is scheduled to begin on November 29, 2016 and be completed by December 21, 2016. The work will require the installation of six new transmission cables and two ''static wires.'' A messenger line with a buoy will be shot out into the river with a propulsive devise, and then picked up by a vessel, which will pull the messenger line to the opposite side of the river. The messenger line will be routed up the tower, and used to pull the cables across the river and onto the towers. Given the six cables and two static wires, there will be a total of eight ''shots.'' The work area is between the eastern and western shores of the Housatonic River. The southern boundary of the work zone begins at the Metro-North Rail Bridge and extends north approximately 525 feet upstream. The Captain of the Port (COTP) Long Island Sound has determined that the potential hazards associated with the cable crossing project could be a safety concern for anyone within the work area.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The late finalization of project details did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the cable crossing operation is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to protect the safety of the public and waterway users.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1231. The COTP Sector LIS has determined that potential hazards associated with the river cable crossing project starting on November 29, 2016 and continuing through December 21, 2016 will be a safety concern for anyone within the work zone. This rule is needed to protect people and vessels within the safety zone while the cable crossing project is completed.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:00 a.m. on November 29, 2016 to 6:00 p.m. on December 21, 2016. The safety zone will cover all navigable waters of the Housatonic River near Milford and Stratford, CT contained within the following area: Beginning at a point on land in position at 41°12′17″ N., 073°06′40″ W. near the Governor John Davis Lodge Turnpike (I–95) Bridge; then northeast across the Housatonic River to a point on land in position at 41°12′20″ N., 073°06′29″ W. near the Governor John Davis Lodge Turnpike (I–95) Bridge; then northwest along the shoreline to a point on land in position at 41°12′25″ N., 073°06′31″ W.; then southwest across the Housatonic River to a point on land in position at 41°12′22″ N., 073°06′43″ W.; then southeast along the shoreline back to point of origin (NAD 83). All positions are approximate. The duration of the zone is intended to ensure the safety of people and vessels in these navigable waters during any instance that necessitates a temporary closure of the Housatonic River at the work site. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The safety zone will only be enforced during cable installation operations or other instances, when they cause a hazard to navigation.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the **Federal Register**, the Local Notice to Mariners, and Broadcast Notice to Mariners via VHF–FM marine channel 16 eight hours in advance of any scheduled enforcement period. The regulatory text we are enforcing appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will affect a small designated area of the Housatonic River for less than one hour at a time during the winter months when vessel traffic is normally low. It also may be enforced temporarily during the cable installation project if necessitated by an emergency. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit this regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**.

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves a safety zone enforced for less than one hour at a time that would prohibit entry within the work zone during each cable installation. It also may be enforced temporarily during the cable installation project if necessitated by an emergency, such as equipment falling from the towers into the Housatonic River. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0825 to read as follows:

§ 165.T01–0825 Safety Zone; United Illuminating Company Housatonic River Crossing Project; Housatonic River; Milford and Stratford, CT.

(a) *Location:* The following area is a safety zone: All navigable waters of the Housatonic River near Milford and Stratford, CT contained within the following area; beginning at a point on land in position at 41°12′17″ N, 073°06′40″ W near the Governor John Davis Lodge Turnpike (I–95) Bridge; then northeast across the Housatonic River to a point on land in position at 41°12′20″ N, 073°06′29″ W near the Governor John Davis Lodge Turnpike (I–95) Bridge; then northwest along the shoreline to a point on land in position at 41°12′25″ N, 073°06′31″ W; then southwest across the Housatonic River to a point on land in position at 41°12′22″ N, 073°06′43″ W; then southeast along the shoreline back to point of origin (NAD 83). All positions are approximate.

(b) *Effective and Enforcement Period:* This rule will be effective from 8:00 a.m. on November 29, 2016 to 6:00 p.m. on December 21, 2016 but will only be enforced during cable installation operations or other instances which may cause a hazard to navigation, when deemed necessary by the Captain of the Port (COTP), Sector Long Island Sound. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 eight hours in advance to any scheduled period of enforcement or as soon as practicable in response to an emergency.

(c) *Definitions.* The following definitions apply to this section: A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative

may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. ''Official patrol vessels'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation. A ''work vessel'' is any vessel provided by United Illuminating Company for the Housatonic River Crossing Project and may be hailed via VHF channel 13 or 16.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in 33 CFR 165.23, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long Island Sound.

(3) Operators of vessels desiring to enter or operate within the safety zone should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) and United Illuminating Company at 203–627–5526 or at 860–904–8551, or the designated representative via VHF channel 16 to obtain permission to do so. Request to enter or operate in the safety zone must be made 24 hours in advanced of the planned undertaking.

(4) Mariners are requested to proceed with caution after passing arrangements have been made. Mariners are requested to cooperate with the United Illuminating Company work vessels for the safety of all concerned. The United Illuminating Company work vessels will be monitoring VHF channels 13 and 16. Mariners are requested to proceed with extreme caution and operate at their slowest safe speed as to not cause a wake.

(5) Any vessel given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.

(6) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

Dated: November 15, 2016.

K.B. Reed,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Long Island Sound.

[FR Doc. 2016–29909 Filed 12–12–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0987]

RIN 1625–AA00

Safety Zone; James River, Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the James River within 1500-foot radius of the M/V SS DEL MONTE, in the vicinity of the James River Reserve Fleet, in support of United States Navy explosive training on the M/V SS DEL MONTE. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the United States Navy explosives training. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Hampton Roads.

DATES: This rule is effective without actual notice from December 13, 2016 through 4 p.m. on December 16, 2016. For the purposes of enforcement, actual notice will be used from 8 a.m. on December 12, 2016, through December 13, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0987 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Sector Hampton Roads Waterways Management, U.S. Coast Guard; telephone 757–668–5580, email *Hamptonroadswaterway@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because information about the training starting at 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016, was not received by the Coast Guard until October 25, 2016. Failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out important national security functions. Due to the timing of the notification it would be impracticable for the Coast Guard to publish an NPRM because there is insufficient time to allow for an opportunity for public comment on the proposed rule. Publishing an NPRM would be contrary to the public interest since immediate action is necessary to protect the public safety by ensuring the standards of training are met. The potential hazards to mariners within the safety zone include shock waves, flying shrapnel, and loud noises. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. As noted above, failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out important national security functions. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determined that potential hazards associated with the military training starting at 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016, will be a safety concern for anyone within a 1500-foot radius of the M/V SS DEL MONTE. This rule is needed to protect the participants,

patrol vessels, and other vessels transiting the navigable waters of the James River, in the vicinity of the James River Reserve Fleet, from hazards associated with military explosives operations. The potential hazards to mariners within the safety zone include shock waves, flying shrapnel, and loud noises.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016. The safety zone will encompass all navigable waters within a 1500-foot radius of the M/V SS DEL MONTE located in approximate position 37°06′11″ N., 076°38′40″ W. The duration of the zone is intended to protect personnel and vessels in these navigable waters while the training is in effect. This safety zone still allows for navigation on the waterway around the safety zone. Access to the safety zone will be restricted during the effective period. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

This rule is not a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be nominal. This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone which will impact a small designated area of the James River in Newport News, Virginia, beginning at 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016. The safety zone will occur during a time of year when vessel traffic is normally low and vessel; traffic will be able to safety transit around the safety zone. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 4 days that will prohibit entry within 1500 feet of the M/V SS DEL MONTE along the James River. It is categorically excluded from further review under paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

H. Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0987 to read as follows:

165.T05–0987 Safety Zone, James River; Newport News, VA.

(a) *Definitions.* For the purposes of this section—

Captain of the Port means the Commander, Sector Hampton Roads.

Participants mean individuals and vessels involved in explosives training.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: All waters in the vicinity of the of the James River Reserve Fleet, in the James River, within a 1500-foot radius of the M/V SS DEL MONTE in approximate position 37°06′11″ N., 076°38′40″ W. (NAD 1983).

(c) *Regulations.*

(1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (b) of this section.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668–5555.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels except participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement Period.* This rule will be enforced from 8 a.m. on December 12, 2016, through 4 p.m. on December 16, 2016.

Richard J. Wester,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–29840 Filed 12–12–16; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. RM 2008–7]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License; Technical Amendment

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; amendment.

SUMMARY: On August 10, 2016, the Copyright Royalty Judges (Judges) published in the **Federal Register** for comment proposed amendments to regulations governing reporting requirements for noncommercial webcasters, including noncommercial educational webcasters, that pay no more than the minimum fee for their use of sound recordings under the applicable statutory licenses. The Judges received three comments. The Judges hereby publish the final rule.

DATES: Effective December 13, 2016.

Applicability Date: May 19, 2016.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle at (202) 707–7658 or at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

In 2009, the Copyright Royalty Judges (Judges) published regulations concerning reporting requirements for webcasters streaming sound recordings under statutory licenses described in 17 U.S.C. 112 and 114. *See* 79 FR 25009. On June 21, 2016, the Judges published a technical amendment to the regulations. 81 FR 40190. Later that same day, the Judges received a Joint Petition of the National Association of Broadcasters and the National Religious Broadcasters Noncommercial Music License Committee (together, Broadcasters) to Amend Final Rule Regarding Reporting Requirements (Joint Motion).

The Broadcasters contended that by removing the definition of ''Minimum Fee Broadcaster'' the Judges had failed to effect their intent. Joint Motion at 7. The Judges agreed that the regulation as amended on June 21, 2016, did not effect their intent because it defined the term ''Eligible Minimum Fee Webcaster'' too narrowly and therefore arguably excluded the webcasts of noncommercial minimum fee broadcasters, a category that the Judges had intended to include. Accordingly, on August 10, 2016, the Judges proposed a second amendment to the regulations and published it for comment. 81 FR 52782.

The Broadcasters filed a joint comment supporting adoption of the proposed second amendment to the regulations. The Intercollegiate Broadcasting System (IBS), which had appealed the prior iterations of the regulations to the U.S. Court of Appeals for the D.C. Circuit, filed a comment that included the following language.

> Given the limited scope of the Notice and without prejudice to its objections to the $500 annual fee, the $100 opt-out fee, and the reporting requirements, IBS interposes no objection to the Notice.

IBS Comment at 2. The Judges interpret that comment as not opposing the proposed second amendment.[1]

List of Subjects in 37 CFR Part 370

Copyright.

Final regulations

In consideration of the foregoing, the Copyright Royalty Judges amend 37 CFR part 370 as follows.

[1] A third comment was filed by Adam Stein, but the Judges found it to be an unreasonable objection as Mr. Stein offered no support for his allegations, which appeared to be based upon a fundamental misunderstanding of compulsory licenses.

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

■ 1. The authority citation for part 370 continues to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(4)(A).

■ 2. Amend § 370.4 in paragraph (b) by revising the definition of ''Eligible Minimum Fee Webcaster'' to read as follows:

§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

* * * * *

(b) * * *

Eligible Minimum Fee Webcaster means a nonsubscription transmission service whose payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114; and:

(i) Is a licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission; or

(ii) Is directly operated by, or affiliated with and officially sanctioned by, a domestically accredited primary or secondary school, college, university, or other post-secondary degree-granting institution; and

(A) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution;

(B) Is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes; and

(C) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(f)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

* * * * *

Dated: November 15, 2016.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2016–29761 Filed 12–12–16; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0455; FRL–9956–41–Region 3]

Determination of Attainment of the 2012 Annual Fine Particulate Matter Standard; Pennsylvania; Delaware County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination that the Delaware County, Pennsylvania moderate nonattainment area (the Delaware County Area) has attained the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). This determination of attainment, also known as a clean data determination, is based upon quality assured, certified, and complete ambient air quality monitoring data showing that this area has monitored attainment of the 2012 annual $PM_{2.5}$ NAAQS based on the 2013–2015 data available in EPA's Air Quality System (AQS) database. As a result of this determination, the requirements for the Delaware County Area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning state implementation plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on February 13, 2017 without further notice, unless EPA receives adverse written comment by January 12, 2017. 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 No. EPA–R03–OAR–2016–0455 at *http://www.regulations.gov,* or via email to *pino.maria@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814–2042, or by email at *huang.gavin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution (the 2012 $PM_{2.5}$ NAAQS). 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual $PM_{2.5}$ standard, lowering the level from 15.0 micrograms per cubic meter (mg/m^3) to 12.0 mg/m^3. The 2012 $PM_{2.5}$ NAAQS is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 mg/m^3. *See* 40 CFR 50.18. On December 18, 2014 (80 FR 2206), EPA made designation determinations, as required by CAA section 107(d)(1), for the 2012 $PM_{2.5}$ NAAQS. In that action, EPA designated the Delaware County Area as moderate nonattainment for the 2012 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.339.

Under EPA's longstanding Clean Data Policy,[1] which was codified in EPA's Clean Air Fine Particulate Implementation Rule (72 FR 20586, April 25, 2007), EPA may issue a determination of attainment after notice and comment rulemaking determining that a specific area is attaining the relevant standard. *See* 40 CFR 51.1004. The effect of a clean data determination is to suspend the requirement for the area to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment for

[1] ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards,'' Memorandum from Stephen D. Page, December 14, 2004.

as long as the area continues to attain the standard.

EPA issued the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements on July 29, 2016 (effective October 24, 2016). 81 FR 58010 (August 24, 2016). In that rule, EPA reaffirmed the Clean Data Policy at 40 CFR 51.1015, as follows:

> Upon a determination by EPA that a moderate $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, provisions demonstrating that reasonably available control measures (including reasonably available control technology for stationary sources) shall be implemented no later than 4 years following the date of designation of the area, reasonable further progress plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended until such time as: (1) The area is redesignated to attainment, after which such requirements are permanently discharged; or, (2) EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the moderate nonattainment area by a future date to be determined by EPA and announced through publication in the **Federal Register** at the time EPA determines the area is violating the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1015.

II. EPA's Evaluation

Under EPA regulations at 40 CFR part 50, § 50.18 and appendix N, the annual primary $PM_{2.5}$ standard is met when the 3-year average of $PM_{2.5}$ annual mean mass concentrations for each eligible monitoring site is less than or equal to 12 μg/m³. Three years of valid annual means are required to produce a valid annual $PM_{2.5}$ NAAQS design value. A year meets data completeness requirements when quarterly data capture rates for all four quarters are at least 75 percent from eligible monitoring sites. *See* 40 CFR part 50, appendix N. There is one $PM_{2.5}$ monitor in the Delaware County Area. Table 1 shows the Delaware County Area design value for the 2012 annual $PM_{2.5}$ NAAQS for the years 2013–2015 at the Delaware County monitor.

TABLE 1—2013–2015 ANNUAL $PM_{2.5}$ VALUES FOR DELAWARE COUNTY, PENNSYLVANIA

Monitor ID	Weighted mean (μg/m³)			Complete quarters			Certified annual design value 2013–2015 (μg/m³)
	2013	2014	2015	2013	2014	2015	
420450002	11.5	12.6	10.7	4	4	4	11.6

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the $PM_{2.5}$ ambient air quality monitoring data for the monitoring period from 2013 through 2015 for the Delaware County Area, as recorded in the AQS database. As shown from Table 1, each quarter in 2013–2015 is complete with all four quarters reporting data capture rates of at least 75 percent from the only monitor. Additionally, the certified annual design value for 2013–2015 is 11.6 μg/m³, which is below the 2012 annual primary $PM_{2.5}$ standard of 12 μg/m³. Therefore, the Delaware County Area has attained the 2012 annual $PM_{2.5}$ NAAQS in accordance with the requirements in 40 CFR part 50, § 50.18 and appendix N.

III. Final Action

EPA is determining that the Delaware County Area has attained the 2012 annual $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1015, finalization of this determination, suspends the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other planning SIP revisions related to the attainment of the 2012 $PM_{2.5}$ NAAQS, so long as this area continues to meet the standard. This determination of attainment does not constitute a redesignation to attainment. The Delaware County Area will remain designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Delaware County Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan, pursuant to sections 107 and 175A of the CAA.

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 determination of attainment if adverse comments are filed. This rule will be effective on February 13, 2017 without further notice unless EPA receives adverse comment by January 12, 2017. 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.

IV. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action makes a determination of attainment of the 2012 $PM_{2.5}$ NAAQS based on air quality and does not impose additional requirements. For that reason, this determination of attainment:

- 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 (Public Law 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).

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).

In addition, this rulemaking determining that the Delaware County Area has attained the 2012 annual $PM_{2.5}$ NAAQS 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.

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 February 13, 2017. 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 determination of attainment of the 2012 annual $PM_{2.5}$ NAAQS for the Delaware County nonattainment area 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 22, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2059, add paragraph (u) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(u) *Determination of attainment.* EPA has determined based on 2013 to 2015 ambient air quality monitoring data, that the Delaware County, Pennsylvania moderate nonattainment area has attained the 2012 annual fine particulate matter ($PM_{2.5}$) primary national ambient air quality standard (NAAQS). This determination, in accordance with 40 CFR 51.1015, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning state implementation plan revisions related to attainment of the standard for as long as this area continues to meet the 2012 annual $PM_{2.5}$ NAAQS.

[FR Doc. 2016–29751 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2014–0464; FRL–9956–10–OAR]

Air Quality Designations for the 2010 Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes the initial air quality designations for four areas in Texas for the 2010 primary sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The Environmental Protection Agency (EPA) is designating three of the areas as nonattainment because they do not meet the NAAQS. One area is being designated unclassifiable because it cannot be classified on the basis of available information as meeting or not meeting the NAAQS. The designations are based on the weight of evidence for each area, including available air quality monitoring data and air quality modeling. For the areas designated nonattainment by this rule, the Clean Air Act (CAA) directs the state of Texas to undertake certain planning and pollution control activities to attain the SO_2 NAAQS as expeditiously as practicable. This action is a supplement to the final rule addressing the second round of area designations for the 2010 SO_2 NAAQS, which the EPA Administrator signed on June 30, 2016.

DATES: The effective date of this rule is January 12, 2017.

ADDRESSES: The EPA has established a docket for the second round of designations, including this supplemental action, under Docket ID No. EPA–HQ–OAR–2014–0464. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically in *http://www.regulations.gov.*

In addition, the EPA has established a Web site for the 2010 SO_2 NAAQS designations rulemakings at: *https://*

www.epa.gov/sulfur-dioxide-designations. The Web site includes the EPA's final SO_2 designations, as well as state and tribal initial recommendation letters, the EPA's letters announcing modifications to those recommendations, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this supplemental action, please contact Liz Etchells, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–0253, email at *etchells.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

U.S. EPA Regional Office Contacts: Region VI—Jim Grady, telephone (214) 665–6745, email at *grady.james@epa.gov.*

The public may inspect the rule and area-specific technical support information at the following location: Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202.

Table of Contents

The following is an outline of the preamble.

I. Preamble Glossary of Terms and Acronyms
II. What is the purpose of this supplemental action?
III. What is the 2010 SO_2 NAAQS and what are the health concerns that it addresses?
IV. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?
V. What guidance did the EPA issue and how did the EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?
VI. What air quality information has the EPA used for these designations?
VII. How do the designations supplementing the Round 2 designations affect Indian country?
VIII. Where can I find information forming the basis for this action and exchanges between the EPA, states and tribes related to this action?
IX. Environmental Justice Concerns
X. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (URMA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)
L. Judicial Review

I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
CAA Clean Air Act
CFR Code of Federal Regulations
DC District of Columbia
EO Executive Order
EPA Environmental Protection Agency
FR Federal Register
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
SO_2 Sulfur Dioxide
SO_X Sulfur Oxides
RFA Regulatory Flexibility Act
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
TAD Technical Assistance Document
TSD Technical Support Document
US United States

II. What is the purpose of this supplemental action?

The purpose of this final action is to announce and promulgate initial air quality designations for four areas in Texas for the 2010 primary SO_2 NAAQS, in accordance with the requirements of the CAA. The EPA is designating three of these areas as nonattainment, and one area as unclassifiable. As discussed in Section IV of this document, the EPA is designating areas for the 2010 SO_2 NAAQS in multiple rounds under a court-ordered schedule pursuant to a consent decree. The EPA completed the first round of SO_2 designations in an action signed by the Administrator on July 25, 2013 (78 FR 47191; August 5, 2013). In that action, the EPA designated 29 areas in 16 states as nonattainment, based on air quality monitoring data.

The court order required the EPA Administrator to sign a notice designating areas in a second round that contained sources meeting certain criteria no later than July 2, 2016. *See Sierra Club and NRDC* v. *McCarthy,* No. 3:13–cv–3953–SI (N.D. Cal.) (March 2, 2015). The four areas in Texas covered by this action met those criteria, and the EPA responded to state recommendations for Round 2 designations, including Texas' recommendations for these four areas, on February 11, 2016 (Letter from Ron Curry, EPA Region 6 Administrator, to Governor of Texas, Honorable Greg Abbott). In the second round of SO_2 designations signed on June 30, 2016, the EPA designated 61 areas in 24 states (including eight other areas in Texas): four nonattainment areas, 41 unclassifiable/attainment areas and 16 unclassifiable areas (81 FR 45039; July 12, 2016). However, by a series of stipulations of the parties in *Sierra Club and NRDC* v. *McCarthy* and orders of the Court, the deadline to promulgate designations was extended to November 29, 2016, for the four areas in Texas that are the subject of this supplemental action. This action to designate four Texas areas further discharges the EPA's duty to issue the second round of SO_2 designations, and uses the same administrative record as supported by the action signed on June 30, 2016, that addressed eight other Texas areas and other areas in the United States, as supplemented by additional materials further addressing these four Texas areas.

In this supplementary designation action, the list of areas being designated in Texas and the boundaries of each area appear in the tables within the regulatory text at the end of this notice. These designations are based on the EPA's technical assessment of and conclusions regarding the weight of evidence for each area, including but not limited to available air quality monitoring data or air quality modeling. With respect to air quality monitoring data, the EPA considered data from the most recent calendar years 2012–2015. In the modeling runs conducted by industry and members of the public, the air quality impacts of the actual emissions for the 3-year periods 2012–2014 or 2013–2015 were assessed.

For the areas being designated nonattainment, the CAA directs states to develop and submit to the EPA State Implementation Plans within 18 months of the effective date of this final rule that meet the requirements of sections 172(c) and 191–192 of the CAA and provide for attainment of the NAAQS as expeditiously as practicable, but not later than 5 years from the effective date of this final rule. We also note that under the EPA's SO_2 Data Requirements Rule in 40 CFR part 51, subpart BB (80 FR 51052; August 21, 2015), the EPA expects to receive additional air quality characterization for the one area in Milam County, Texas, designated unclassifiable in this action, and the agency will consider such data, as appropriate, in future actions.

III. What is the 2010 SO_2 NAAQS and what are the health concerns that it addresses?

The Administrator signed a final rule revising the primary SO_2 NAAQS on June 2, 2010. The rule was published in the **Federal Register** on June 22, 2010 (75 FR 35520) and became effective on August 23, 2010. Based on the Administrator's review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO_2, the EPA revised the primary SO_2 NAAQS to provide requisite protection of public health with an adequate margin of safety. Specifically, the EPA established a new 1-hour SO_2 standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. 40 CFR 50.17(a)–(b). The EPA also established provisions to revoke both the existing 24-hour and annual primary SO_2 standards, subject to certain conditions. 40 CFR 50.4(e).

Additional information regarding the current scientific evidence on the health impacts of short-term exposures to SO_2 is provided in the **Federal Register** notice containing the final rule for the second round of SO_2 designations for other areas that was signed on June 30, 2016. *See* 81 FR 45041.

IV. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?

After the EPA promulgates a new or revised NAAQS, the EPA is required to designate all areas of the country as either ''nonattainment,'' ''attainment,'' or ''unclassifiable,'' for that NAAQS pursuant to section 107(d)(1) of the CAA. Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as ''any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.'' If an area meets either prong of this definition, then the EPA is obligated to designate the area as ''nonattainment.'' This provision also defines an attainment area as any area other than a nonattainment area that meets the NAAQS and an unclassifiable area as any area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

Additional information regarding the process for designating areas following promulgation of a new or revised NAAQS pursuant to section 107(d) of the CAA and how the EPA is applying this process to the designation of areas under the 2010 SO_2 NAAQS is provided in the final rule addressing the second round of SO_2 designations for other areas signed on June 30, 2016. *See* 81 FR 45041. For this supplemental action, the EPA reiterates that CAA section 107(d) provides the agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (*e.g.,* ''contributes to'' and ''nearby'') for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA's position is that the statute does not require the agency to establish bright line tests or thresholds for what constitutes ''contribution'' or ''nearby'' for purposes of designations.[1]

Similarly, the EPA's position is that the statute permits the EPA to evaluate the appropriate application of the term ''area'' to include geographic areas based upon full or partial county boundaries, as may be appropriate for a particular NAAQS. For example, CAA section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area ''or portions thereof,'' and under CAA section 107(d)(1)(B)(iv) a designation remains in effect for an area ''or portion thereof'' until the EPA redesignates it.

As explained in more detail in the final rule addressing the second round of SO_2 designations for other areas, the EPA completed the first round of SO_2 designations for 29 areas on July 25, 2013 (78 FR 47191), and intends to complete up to three more rounds of designations to address all remaining areas pursuant to a schedule contained in a consent decree and enforceable order entered by the U.S. District Court for the Northern District of California on March 2, 2015. *See* 81 FR 45042.

The court order specifies that in this second round of SO_2 designations the EPA must designate two groups of areas: (1) Areas that have newly monitored violations of the 2010 SO_2 NAAQS and (2) areas that contain any stationary sources that had not been announced as of March 2, 2015, for retirement and that, according to the EPA's Air Markets Database, emitted in 2012 either (i) more than 16,000 tons of SO_2, or (ii) more than 2,600 tons of SO_2 with an annual average emission rate of at least 0.45 pounds of SO_2 per one million British thermal units (lbs SO_2/mmBTU).

On March 20, 2015, the EPA sent letters to Governors notifying them of the schedule for completing the remaining designations for the 2010 1-hour SO_2 NAAQS. The EPA offered states, including Texas, the opportunity to submit updated recommendations and supporting information for the EPA to consider for the affected areas. The EPA also notified states that the agency had updated its March 24, 2011, SO_2 designations guidance to support analysis of designations and boundaries for the next rounds of designations. All of the states, including Texas, with affected areas submitted updated designation recommendations.

In a letter dated February 11, 2016, the EPA notified Texas of its intended designation of twelve Round 2 areas, including the four areas in Texas addressed in this final notice, as either nonattainment, unclassifiable/attainment, or unclassifiable for the SO_2 NAAQS. Texas then had the opportunity to demonstrate why they believed the EPA's intended modification of their updated recommendations may be inappropriate. Although not required, as the EPA had done for the first round of SO_2 designations, the EPA also provided an opportunity for members of the public to comment on the EPA's February 2016 response letters. The EPA published a notice of availability and public comment period for the intended designation on March 1, 2016 (81 FR 10563). The public comment period closed on March 31, 2016. The updated recommendations, the EPA's February 2016 responses to those letters, any modifications, and the subsequent state and public comment letters, are in the docket for the Round 2 SO_2 designations at Docket ID No. EPA–HQ–OAR–2014–0464 and are available on the SO_2 designations Web site.

Before taking final action, however, the parties to *Sierra Club and NRDC* v. *McCarthy* filed the first in a series of joint stipulations extending the deadline for these four areas in Texas, out to November 29, 2016.[2] In the final rule signed on June 30, 2016, the EPA promulgated designations for the Round 2 areas for which no extensions in the deadline had been obtained (including the eight other Texas areas) and explained the ongoing process for completing SO_2 designations for all

[1] This view was confirmed in *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).

[2] The parties to *Sierra Club and NRDC* v. *McCarthy* also filed a joint stipulation extending the Round 2 designation deadline for the Muskogee County Area in Oklahoma out to December 31, 2016.

areas of the country by December 31, 2020 (*see generally* 81 FR 45042–43).

In these supplemental Round 2 designations, and consistent with the extended deadline under the consent decree, the EPA must designate the four areas in Texas associated with the following sources by November 29, 2016: The Big Brown Steam Electric Station in the Freestone and Anderson Counties Area, the Sandow Power Station in the Milam County Area, the Martin Lake Electrical Station in the Rusk and Panola Counties Area, and the Monticello Steam Electric Station in the Titus County Area.

V. What guidance did the EPA issue and how did the EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?

Following entry of the March 2, 2015, court order, the EPA issued updated designations guidance through a March 20, 2015, memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Air Division Directors, U.S. EPA Regions 1–10 titled, ''Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard.'' As explained in the final rule addressing the second round of SO_2 designations for other areas signed on June 30, 2016, this guidance contains the factors the EPA intends to evaluate in determining the appropriate designations and associated boundaries for all remaining areas in the country, including: (1) Air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries. *See* 81 FR at 45043. Additional information regarding relevant guidance relied upon in designating the other second round areas and that is also used in this supplemental action is available in the previously issued final rule. *See id.*

VI. What air quality information has the EPA used for these designations?

To inform designations for the SO_2 NAAQS, air agencies have the flexibility to characterize air quality using either appropriately sited ambient air quality monitors or using modeling of actual or allowable source emissions. The EPA's non-binding Monitoring Technical Assistance Document (TAD) and Modeling TAD contain scientifically sound recommendations on how air agencies should conduct such monitoring or modeling. For the SO_2 designations of the four Texas areas addressed in this supplemental action, the EPA is using the same approach taken for a number of areas designated in the final rule signed on June 30, 2016, and considering available air quality monitoring data from calendar years 2012–2015, and modeling submitted by the affected emissions sources and a public interest group. *See* 81 FR 45043. In the modeling runs, the impacts of the actual emissions for the 3-year periods 2012–2014 or 2013–2015 were considered. The 1-hour primary SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. The EPA has concluded that dispersion modeling shows that three Round 2 areas in Texas (portions of Freestone and Anderson Counties, portions of Rusk and Panola Counties, and portions of Titus County) are not meeting the 1-hour primary SO_2 standard and we are, therefore, designating these areas as nonattainment. Based on available information, the EPA has also concluded that it cannot determine whether one Round 2 area in Texas (Milam County) is or is not meeting the 1-hour primary SO_2 standard and whether the area contributes to a violation in a nearby area. Therefore, we are designating this area as unclassifiable. Details about the available information can be found in the supplemental technical support document in the docket for the Round 2 SO_2 designations at Docket ID No. EPA–HQ–OAR–2014–0464.

VII. How do the designations supplementing the Round 2 designations affect Indian country?

For the designations in four areas of Texas for the 2010 primary SO_2 NAAQS supplementing the Round 2 designations, the EPA is designating 3 state areas as nonattainment and 1 state area as unclassifiable. No areas of Indian country are being designated as part of this action.

VIII. Where can I find information forming the basis for this action and exchanges between the EPA, states and tribes related to this action?

Information providing the basis for this action can be found in several technical support documents (TSDs), a response to comments document (RTC) and other information in the docket. The TSDs, RTC, applicable EPA guidance memoranda and copies of correspondence regarding this process between the EPA and the states, tribes and other parties, are available for review at the EPA Docket Center listed above in the **ADDRESSES** section of this document and on the agency's SO_2 Designations Web site at *https://www.epa.gov/sulfur-dioxide-designations.* Area-specific questions can be addressed by the EPA Regional office (*see* contact information provided at the beginning of this notice).

IX. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This final action addresses designation determinations for four areas in Texas for the 2010 primary SO_2 NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

X. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to selected areas as required.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempted from the Office of Management and Budget because it responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action responds to the requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107 of title 1. This action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This final rule is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements under the APA but is subject to the CAA section 107(d)(2)(B) which does not require a notice-and-comment rulemaking to take this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described by URM, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This final action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action concerns the designation of certain areas in the U.S. for the 2010 primary SO_2 NAAQS. The CAA provides for states and eligible tribes to develop plans to regulate emissions of air pollutants within their areas, as necessary, based on the designations. The Tribal Authority Rule (TAR) provides tribes the opportunity to apply for eligibility to develop and implement CAA programs, such as programs to attain and maintain the SO_2 NAAQS, but it leaves to the discretion of the tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes. It does not create any additional requirements beyond those of the SO_2 NAAQS. This rule establishes the designations for certain areas of the country for the SO_2 NAAQS, but no areas of Indian country are being designated in this action. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, after the EPA promulgated the 2010 primary SO_2 NAAQS, the EPA communicated with tribal leaders and environmental staff regarding the designations process. The EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2010 primary SO_2 NAAQS, to provide the EPA designations guidance, and to offer consultation with the EPA. The EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. The EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to the EPA about the EPA's intended designations for the SO_2 standard and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to the EPA about the general designations process for the 2010 primary SO_2 NAAQS, as well as concerns specific to a tribe, and informed the EPA about key tribal concerns regarding designations as the rule was under development. For this supplemental round of SO_2 designations action, the EPA sent additional letters to tribes that could potentially be affected and offered additional opportunities for participation in the designations process. The communication letters to the tribes are provided in the dockets for Round 1 designations (Docket ID No. EPA–HQ–OAR–2012–0233) and Round 2 designations (Docket ID No. EPA–HQ–OAR–2014–0464).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866. While not subject to the Executive Order, this final action may be especially important for asthmatics, including asthmatic children, living in SO_2 nonattainment areas because respiratory effects in asthmatics are among the most sensitive health endpoints for SO_2 exposure. Because asthmatic children are considered a sensitive population, the EPA evaluated the potential health effects of exposure to SO_2 pollution among asthmatic children as part of the EPA's prior action establishing the 2010 primary SO_2 NAAQS. These effects and the size of the population affected are summarized in the EPA's final SO_2 NAAQS rules. *See http://www3.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf.*

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and or indigenous peoples, as specified Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section IX of this document.

K. Congressional Review Act (CRA)

The CRA, 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 U.S. The 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 U.S. 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). This rule will be effective January 12, 2017.

L. Judicial Review

Section 307 (b) (1) of the CAA indicates which Federal Courts of Appeal have venue for petitions for review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable

regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This final action designating areas for the 2010 primary SO_2 NAAQS is ''nationally applicable'' within the meaning of section 307(b)(1). As explained in the preamble, this final action supplements the June 30, 2016 final action taken by the EPA to issue a second round of designations for areas across the U.S. for the 2010 primary SO_2 NAAQS. EPA determined the June 30, 2016 final action was ''nationally applicable'' within the meaning of section 307(b)(1). 81 FR 45045. The rulemaking docket, EPA–HQ–OAR–2014–0464, is the same docket for both the June 30, 2016 action and for this supplemental action, with the relevant difference being that in addition to the materials it contained regarding these four Texas areas generated through June 30, 2016—the date that action was signed by the Administrator—it now also contains the final technical support documents and responses to comments related to these four areas. Both the June 30, 2016 action and this supplemental action were proposed in a single March 1, 2016, notice announcing the EPA's intended Round 2 designations and were taken to discharge a duty under the court order to issue a round of designations of areas with sources meeting common criteria in the court order. As explained in the June 30, 2016 final rule, at the core of that final action and this supplemental final action is the EPA's interpretation of the definitions of nonattainment, attainment and unclassifiable under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country. *Id.* Accordingly, the Administrator has determined that this supplemental final action, which results from the same proposed action as the June 30, 2016 final action, is nationally applicable and is hereby publishing that finding in the **Federal Register**.

For the same reasons, the Administrator also is finding that this supplemental final action is based on a determination of nationwide scope and effect for the purposes of section 307(b)(1). As previously explained in the June 30, 2016 final action, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. 81 FR 45045. Here, the June 30, 2016 final action and this supplemental final action combined issue designations in 65 areas in 24 states and extend to numerous judicial circuits. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the action to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit. Therefore, like the June 30, 2016 final action it supplements, *see* 81 FR at 45045, this final action is based on a determination by the Administrator of nationwide scope or effect, and the Administrator is hereby publishing that finding in the **Federal Register**.

Thus, any petitions for review of these final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 29, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.344 is amended by revising the table titled ''Texas—2010 Sulfur Dioxide NAAQS (Primary)'' to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Freestone and Anderson Counties, TX [1]	1/12/17	Nonattainment.
Freestone County (part) and Anderson County (part)		
Those portions of Freestone and Anderson Counties encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 14 with datum NAD83 as follows:		
(1) Vertices—UTM Easting (m) 766752.69, UTM Northing (m) 3536333.0,		
(2) vertices—UTM Easting (m) 784752.69, UTM Northing (m) 3536333.0,		
(3) vertices—UTM Easting (m) 784752.69, UTM Northing (m) 3512333.0,		
(4) vertices—UTM Easting (m) 766752.69, UTM Northing (m) 3512333.0		
Rusk and Panola Counties, TX [1]	1/12/17	Nonattainment.
Rusk County (part) and Panola County (part)		
Those portions of Rusk and Panola Counties encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 15 with datum NAD83 as follows:		
(1) Vertices—UTM Easting (m) 340067.31, UTM Northing (m) 3575814.75		
(2) vertices—UTM Easting (m) 356767.31, UTM Northing (m) 3575814.75		
(3) vertices—UTM Easting (m) 356767.31, UTM Northing (m) 3564314.75		
(4) vertices—UTM Easting (m) 340067.31, UTM Northing (m) 3564314.75		
Titus County, TX [1]	1/12/17	Nonattainment.
Titus County (part)		
That portion of Titus County encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 15 with datum NAD83 as follows:		

TEXAS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

Designated area	Designation	
	Date	Type
(1) Vertices—UTM Easting (m) 304329.030, UTM Northing (m) 3666971.0, (2) vertices—UTM Easting (m) 311629.030, UTM Northing (m) 3666971.0, (3) vertices—UTM Easting (m) 311629.03, UTM Northing (m) 3661870.5, (4) vertices—UTM Easting (m) 304329.03, UTM Northing (m) 3661870.5		
Milam County, TX [1]	1/12/17	Unclassifiable.
Milam County, TX		
Potter County, TX [1]	9/12/16	Unclassifiable.
Potter County, TX		
Atascosa County, TX [1]	9/12/16	Unclassifiable/Attainment.
Atascosa County, TX		
Fort Bend County, TX [1]	9/12/16	Unclassifiable/Attainment.
Fort Bend County		
Goliad County, TX [1]	9/12/16	Unclassifiable/Attainment.
Goliad County		
Lamb County, TX [1]	9/12/16	Unclassifiable/Attainment.
Lamb County		
Limestone County, TX [2]	9/12/16	Unclassifiable/Attainment.
Limestone County		
McLennan County, TX [2]	9/12/16	Unclassifiable/Attainment.
McLennan County, TX		
Robertson County, TX [2]	9/12/16	Unclassifiable/Attainment.
Robertson County		

[1] Excludes Indian country located in each area, if any, unless otherwise specified.
[2] Includes Indian country located in each area, if any, unless otherwise specified.

* * * * *

[FR Doc. 2016–29561 Filed 12–12–16; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130312235–3658–02]

RIN 0648–XF058

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Re-Opening of the Commercial Sector for South Atlantic Vermilion Snapper

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

ACTION: Temporary rule; re-opening.

SUMMARY: NMFS announces the re-opening of the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic through this temporary rule. The most recent commercial landing data for vermilion snapper indicate the commercial annual catch limit (ACL) for the July through December 2016 fishing season has not yet been reached. Therefore, NMFS re-opens the commercial sector for vermilion snapper in the South Atlantic EEZ for 2 days to allow the commercial ACL to be caught, while minimizing the risk of the commercial ACL being exceeded.

DATES: This rule is effective 12:01 a.m., local time, December 14, 2016, until 12:01 a.m., local time, December 16, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes vermilion snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (equal to the commercial quota) for vermilion snapper in the South Atlantic is divided into separate quotas for two 6-month time periods each year, January through June and July through December. For the July through December 2016 period, the commercial quota is 388,703 lb (176,313 kg, gutted weight, 431,460 lb (195,707 kg), round weight), as specified in 50 CFR 622.190(a)(4)(ii)(D).

On July 1, 2016, the commercial fishing season opened for the second period of July through December for this fishing year. Under 50 CFR 622.191(a)(6)(ii), NMFS is required to reduce the commercial trip limit for vermilion snapper from 1,000 lb (454 kg), gutted weight, 1,110 lb (503 kg), round weight, when 75 percent of the respective fishing season commercial quota is reached or projected to be reached. Accordingly, on August 25, 2016 (81 FR 58411), NMFS published a temporary rule in the **Federal Register** to reduce the commercial trip limit for vermilion snapper in or from the EEZ of the South Atlantic for the July through December 2016 period to 500 lb (227 kg), gutted weight. The commercial trip limit reduction was effective at 12:01 a.m., local time, August 28, 2016.

Under 50 CFR 622.193(f)(1), NMFS is required to close the commercial sector for vermilion snapper when the

commercial quota for the July through December fishing season specified in § 622.190(a)(4)(ii)(D) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS previously projected that the commercial quota for South Atlantic vermilion snapper for the July through December 2016 period would be reached by October 11, 2016. Therefore, NMFS published a temporary rule to close the commercial sector for South Atlantic vermilion snapper effective on October 11, 2016, through the end of the 2016 fishing year (81 FR 69008, October 5, 2016).

NMFS has received more recent landings data for vermilion snapper that indicate the commercial quota for the July through December period has not been reached. NMFS has also determined that 845 lb (383 kg) of the commercial quota was not harvested from the January through June 2016 period. Therefore, as specified at 622.190(a)(4)(iii), this 845 lb (383 kg) was added to the commercial quota for the July through December 2016 period.

In accordance with 50 CFR 622.8(c), NMFS temporarily re-opens the commercial sector for vermilion snapper on December 14, 2016. The commercial sector will remain open for 2 days to allow for the commercial quota to be reached. During the re-opening, the trip limit of 500 lb (227 kg), gutted weight, is in effect. The commercial sector will close at 12:01 a.m., local time, December 16, 2016, and remain closed until January 1, 2017, the start of the next fishing year. NMFS has determined that this re-opening will allow for an additional opportunity to commercially harvest vermilion snapper while minimizing the risk of exceeding the July through December 2016 commerical quota.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, December 16, 2016. During the subsequent closure, the bag limit specified in 50 CFR 622.187(b)(5) and the possession limits specified in 50 CFR 622.187(c)(1), apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ. During the subsequent closure, the sale or purchase of vermilion snapper taken from the EEZ is prohibited. As specified in 50 CFR 622.190(c)(1)(i), the prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 16, 2016, and were held in cold storage by a dealer or processor. For a person onboard a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and the prohibition on sale and purchase apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

The Regional Administrator, NMFS Southeast Region, has determined this temporary rule is necessary for the conservation and management of vermilion snapper and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to temporarily re-open the commercial sector for vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and AMs has been subject to notice and comment, and all that remains is to notify the public of the re-opening. Such procedures are contrary to the public interest because of the need to immediately implement this action to allow commercial fishers to harvest the commercial quota of vermilion snapper from the EEZ, while minimizing the risk of exceeding the commercial quota. Prior notice and opportunity for public comment would be contrary to the public interest because it would not allow for the re-opening of the commercial sector before the end of the fishing season.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–29893 Filed 12–8–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 239
Tuesday, December 13, 2016

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 Parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1222, 1230, 1250, and 1260

[Document Number AMS–DA–16–0101]

Provisions for Removing Commodity Research and Promotion Board Members and Staff

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of comment period.

SUMMARY: Notice is hereby given that the comment period on proposed amendments to the provisions for removal of board and council members or staff of the research and promotion orders—or the regulations under the orders—overseen by the Agricultural Marketing Service (AMS) is extended to December 23, 2016. The proposed rule would provide uniform authority for the U.S. Department of Agriculture (USDA) to initiate action to remove board members and staff who fail to perform their duties or who engage in dishonest actions or willful misconduct. Such action is necessary to ensure the boards can continue to fulfill their intended purposes with minimal disruption.

DATES: Comments must be received by December 23, 2016.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments should be submitted on the internet at: *http://www.regulations.gov.* Written comments may also be sent to Laurel L. May, Senior Marketing Specialist, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, 1400 Independence Avenue SW., Room 2967–S—Stop 0231, Washington, DC 20250–0231; facsimile: 202–690–0552. All comments should reference the document number and the date and page number of this issue and the November 23, 2016, issue of the **Federal Register**, and will be made available for public inspection in the above office during regular business hours, or may be viewed at: *http://www.regluations.gov.* Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Laurel L. May, Senior Marketing Specialist, USDA/AMS/Dairy Program, telephone 202–690–1366, or email *Laurel.May@ams.usda.gov*; or Whitney Rick, Director; Promotion, Research, and Planning Division; USDA/AMS/Dairy Program; telephone 202–720–6961; or email Whitney.Rick@ams.usda.gov.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on November 23, 2016 (81 FR 84510). The proposed rule would amend the orders and/or rules and regulations for 19 of the 22 national commodity research and promotion programs overseen by AMS by providing uniform authority for USDA to initiate action as necessary to remove board and council members or their staff employees to preserve program integrity and mitigate damage from illegal or inappropriate behavior. Currently, most of AMS's 22 research and promotion programs specify provisions for removing board and council members or their staff employees when they are unwilling or unable to perform their duties properly or when they engage in prohibited or illegal activities or other willful misconduct. However, removal authority is inconsistent across all of the programs, which impairs AMS's ability to provide uniform oversight of the programs and their assets. The 15-day comment period provided in the proposed rule closes December 8, 2016.

USDA received letters from several of the affected programs requesting that the comment period be extended. The letters expressed concern that the original comment period was insufficient to allow commenters to adequately evaluate the impacts of the proposal and develop appropriate comments.

Authority: This document is issued under 19 of the commodity research and promotion orders established under the following acts: Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2911); Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101–2118); Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501–4514); Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); Hass Avocado Promotion, Research, and Information Act of 2000 (U.S.C. 7801–7813); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); Popcorn Promotion, Research, and Consumer Information Act of 1996 (7 U.S.C. 7481–7491); Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611–2627); and Watermelon Research and Promotion Act (7 U.S.C. 4901–4916). These acts are collectively referred to as ''commodity research and promotion laws'' or ''acts.''

Dated: December 7, 2016.

Bruce Summers,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016–29852 Filed 12–12–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4220; Directorate Identifier 2015–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: We are revising an earlier proposal to supersede Airworthiness Directive (AD) 2011–24–06. AD 2011–24–06 applies to all BAE Systems (Operations) Limited Model Bae 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes. This action revises the NPRM by adding airplanes to the applicability. We are proposing this AD to address the unsafe condition on these products. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by January 27, 2017.

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 SNPRM, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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–2016–4220; 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 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

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–2016–4220; Directorate Identifier 2015–NM–076–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

On November 8, 2011, we issued AD 2011–24–06, Amendment 39–16870 (76 FR 73477, November 29, 2011) (''AD 2011–24–06''). AD 2011–24–06 requires actions intended to address an unsafe condition on all BAE Systems (Operations) Limited Model BAe 146 series airplanes; and Model Avro 146–RJ series airplanes.

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD to supersede AD 2011–24–06 that would apply to all BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes. The NPRM published in the **Federal Register** on March 8, 2016 (81 FR 12044) (''the NPRM''). The NPRM was prompted by a determination that new or revised structural inspection requirements are necessary. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate new or revised structural inspection requirements.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have determined that the applicability should include BAE Systems (Operations) Limited Model BAe 146 series airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0071, dated March 19, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all BAE Systems (Operations) Limited Model BAe 146 series and Avro 146–RJ series airplanes. The MCAI states:

> The BAe 146/AVRO 146–RJ Aircraft Maintenance Manual (AMM) includes the Chapters as listed in Appendix 1 of this [EASA] AD. Compliance with these chapters has been identified as a mandatory action for continued airworthiness and EASA AD 2012–0004 was issued to require operators to comply with those instructions.
>
> Since that [EASA] AD was issued, BAE Systems (Operations) Ltd revised the AMM (Revision 107), introducing a new defined life limit for the Fire Bottle Cartridge Firing Unit into Chapter 05–10–15. Subsequently, Revision 108 of the AMM introduced in Chapter 05–20–00 inspection tasks for repairs applied to fatigue critical structures and also introduced a new Chapter 05–20–07 to provide Structural Repair Manual (SRM) references for these tasks, applicable to repairs accomplished after the publication of AMM Revision 108. Finally, AMM Revision 111 introduced safe life limitations into Chapter 05–10–15 for rollers of main landing gear and door up-locks.
>
> Furthermore, Section 6 of the Maintenance Review Board Report (MRBR) Document MRB 146–01, Issue 2, Revision 18 was published (as referenced in Chapter 05–20–01 of the AMM) to correct discrepancies in inspection tasks for a number of Structurally Important Items (SIIs). Grace periods for these revised inspection tasks are included in BAE Systems (Operations) Ltd Inspection Service Bulletin (ISB) ISB.53–237.
>
> Failure to comply with the new and more restrictive tasks and limitations referenced above could result in an unsafe condition.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0004, which is superseded, and requires implementation of the maintenance tasks and/or airworthiness limitations as specified in the defined parts of Chapter 05 of the AMM at Revision 112.

The unsafe condition is fatigue cracking of certain structural elements, which could adversely affect the structural integrity of the airplane. 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–2016–4220.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comment received.

Request To Revise the Applicability

Neptune Aviation Services requested that we revise the applicability to include BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes. The commenter stated that these airplanes are in the applicability of AD 2011–24–06.

We agree that BAE Systems (Operations) Limited BAe 146–100A, –200A, and –300A airplanes should be in the applicability in order to address the identified unsafe condition for those airplanes. We have revised paragraph (c) of this proposed AD accordingly.

FAA's Determination and Requirements of This SNPRM

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.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

This proposed AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and critical design configuration control limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Costs of Compliance

We estimate that this SNPRM affects 2 airplanes of U.S. registry.

The actions required by AD 2011–24–06 and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2011–24–06 is $255 per product.

We also estimate that it would take about 1 work-hour 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 $170, or $85 per product.

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 removing Airworthiness Directive (AD) 2011–24–06, Amendment 39–16870 (76 FR 73477, November 29, 2011), and adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2016–4220; Directorate Identifier 2015–NM–076–AD.

(a) Comments Due Date

We must receive comments by January 27, 2017.

(b) Affected ADs

This AD replaces AD 2011–24–06, Amendment 39–16870 (76 FR 73477, November 29, 2011) (''AD 2011–24–06'').

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by a determination that new or revised structural inspection requirements are necessary. We are issuing this AD to detect and correct fatigue cracking of certain structural elements, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Retained Airworthiness Limitations Revisions of the Shock Absorber Assemblies, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2011–24–06, with no changes. Within 90 days after January 3, 2012 (the effective date of AD 2011–24–06), revise the maintenance program, by incorporating Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE Systems (Operations) Limited BAe 146 Series/Avro 146–RJ Series Aircraft Maintenance Manual (AMM), Revision 104, dated April 15, 2011, to remove life limits on shock absorber assemblies, but not the individual shock absorber components, amend life limits on main landing gear (MLG) up-locks and door up-locks, and to introduce and amend life limits on MLG components. Accomplishing the actions required by paragraph (i) of this AD terminates the actions required by this paragraph.

(h) Retained No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs), With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2011–24–06, with no changes. Except as specified in paragraph (i) of this AD: After accomplishing the revision required by paragraph (g) of this AD, no

alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used, unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) New Revise Maintenance Program or Inspection Program

Within 90 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate new and revised limitations, tasks, thresholds, and intervals using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Accomplishing the actions required by this paragraph terminates the actions required by paragraph (g) of this AD.

Note 1 to paragraph (i) of this AD: An additional source of guidance for the actions specified in paragraph (i) of this AD can be found in BAe 146/AVRO 146–RJ Airplane Maintenance Manual, Revision 112, dated October 15, 2013.

Note 2 to paragraph (i) of this AD: An additional source of guidance for the actions specified in paragraph (i) of this AD can be found in Corrosion Prevention Control Program (CPCP) Document No. CPCP–146–01, Revision 4, dated September 15, 2010.

Note 3 to paragraph (i) of this AD: An additional source of guidance for the actions specified in paragraph (i) of this AD can be found in Supplemental Structural Inspections Document (SSID) Document No. SSID–146–01, Revision 2, dated August 15, 2012.

Note 4 to paragraph (i) of this AD: An additional source of guidance for the actions specified in paragraph (i) of this AD can be found in Maintenance Review Board Report Document No. MRB 146–01, Issue 2, Revision 19, dated August 2012.

Note 5 to paragraph (i) of this AD: An additional source of guidance for the actions specified in paragraph (i) of this AD can be found in BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–237, Revision 1, dated April 2, 2013.

(j) New No Alternative Actions, Intervals, and/or CDCCLs

After accomplishment of the revision required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used, unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0071, dated March 19, 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–2016–4220.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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 November 10, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28060 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: We are revising an earlier proposal to supersede Airworthiness Directive (AD) 2014–16–02 for certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. This action revises the notice of proposed rulemaking (NPRM) by reducing the compliance time to modify the thrust reversers, and adding new modification procedures. We are proposing this AD to address the unsafe condition on these products. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by January 27, 2017.

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 SNPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America; toll-free telephone number 1–866–538–1247 or direct-dial telephone number 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view

this referenced service information at the FAA, Transport 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–2015–7529; 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 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 (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531; email: *cesar.gomez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to supersede AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014) (''AD 2014–16–02''). AD 2014–16–02 applies to certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. The NPRM published in the **Federal Register** on December 24, 2015 (80 FR 80293) (''the NPRM''). The NPRM was prompted by a determination that it is necessary to add a requirement to repair or modify the thrust reversers, which would terminate the requirements of AD 2014–16–02. The NPRM proposed to continue to require the actions specified in AD 2014–16–02. The NPRM also proposed to require repair or modification of the thrust reversers. This action revises the NPRM by reducing the compliance time to modify the thrust reversers, and adding new modification procedures.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, issued Canadian Airworthiness Directive CF–2014–19R1, dated March 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. The MCAI states:

> There have been two reported incidents of partial deployment of an engine thrust reverser in-flight, caused by a failure of the translating sleeve at the thrust reverser actuator attachment points. Inspection of the same area on some other thrust reversers revealed cracks emanating from the holes under the nut plates.
>
> In both incidents, the affected aeroplane landed safely without any noticeable controllability issues, however structural failure of thrust reverser actuator attachment points resulting in thrust reverser deployment or dislodgment in flight is a safety hazard warranting an immediate mitigating action.
>
> To help in mitigating any immediate safety hazard, Bombardier Inc. has revised the Aircraft Flight Manual (AFM) through Temporary Revisions (TR) 600/29, 600/30, 600–1/24 and 600–1/26, to prohibit the thrust reverser operation on affected aeroplanes. Additionally, as an interim corrective action, Bombardier Inc. has issued alert service bulletin (ASB) A600–0769 requiring an inspection and/or a mechanical lock out of the thrust reverser to prevent it from moving out of forward thrust mode.
>
> Original [TCCA] Emergency AD CF–2014–19 was issued 20 June 2014 to mandate the incorporation of above mentioned revised AFM procedures and compliance with ASB A600–0769. This [TCCA] AD is now being revised to include the terminating action in accordance with Part C of the ASB A600–0769 Rev 02 dated 22 February 2016.

We reduced the compliance time for modification of the thrust reversers specified in paragraph (k) of this SNPRM to match the compliance time specified in the MCAI. We also added new procedures in paragraph (k) of this SNPRM for modifying the thrust reversers.

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–2015–7529.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. The service information describes procedures for modifying the thrust reversers on both engines. The modification includes inspections for cracks and elongated holes.

We also reviewed the following TRs, which introduce procedures to prohibit thrust reverser operation. These documents are distinct since they apply to different airplane configurations.

- Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM.
- Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets).

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

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comments received.

Request To Cite Most Recent Service Information

Bombardier, Inc. requested that we revise the proposed AD (in the NPRM) to cite the most recent AFMs. Bombardier, Inc. explained that the AFM TRs mentioned in paragraph (g) of the proposed AD (in the NPRM) have been revised to include AFM TRs 600/30–2, 600–1/26–2, 600/29–2, and 600–1/24–2, all dated January 18, 2016.

We agree to refer to the revised AFM TRs that apply to U.S.-registered airplanes in paragraphs (g)(1) and (g)(2) of this proposed AD. Those TRs are Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM; and Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets).

Bombardier, Inc. also requested that we refer to Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, as described previously.

We agree with the commenter's request. We revised the introductory text of paragraph (h) and paragraphs (h)(2), (i), and (k) of this proposed AD to refer to Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. We also clarified the

actions specified in paragraphs (h)(2) and (i) of this proposed AD by referring to Part B of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, for the modification specified in those paragraphs.

In addition, paragraph (k) of the proposed AD (in the NPRM) specified doing a repair or modification using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). Because Part C of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, is the appropriate source of service information for doing the terminating action (*i.e.,* modifying the thrust reversers), we have revised paragraph (k) of this proposed AD to refer to that service information. However, under the provisions of paragraph (n)(1) of this proposed AD, we will consider requests for approval of other repairs or modifications if sufficient data are submitted to substantiate that the repair or modification would provide an acceptable level of safety.

Request To Specify Terminating Action

Bombardier, Inc. requested that we revise paragraph (k) of the proposed AD (in the NPRM) to specify that doing the actions specified in that paragraph terminates the requirements of paragraph (g) of the proposed AD.

We agree with the commenter's request. The MCAI states that accomplishing the modification in Part C of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, terminates the inspections and interim modification. However, we have determined that accomplishing the actions in Part C of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, also terminates the requirement for the AFM revisions specified in paragraph (g) of this proposed AD. The TRs specified in paragraph (g) of this proposed AD only apply to airplanes on which the actions specified in Part C of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, have not been done. We have revised paragraph (k) of this proposed AD accordingly.

Request To Revise Phone Number and Email

Bombardier, Inc. requested that we revise the NPRM to include revised contact information for the widebody customer response center.

We agree and have revised the **ADDRESSES** section of this SNPRM and paragraph (o)(2) of this proposed AD accordingly.

FAA's Determination and Requirements of This SNPRM

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.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Differences Between This SNPRM and the MCAI or Service Information

Part C of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, specifies to do certain inspections for cracks and elongated holes, but does not specify corrective actions for airplanes on which any crack or elongated hole is found. Paragraph (l) of this proposed AD would require that for any cracking or elongated hole, a repair be done using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

Costs of Compliance

We estimate that this proposed AD would affect 18 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision; inspection [retained actions from AD 2014–16–02].	29 work-hours × $85 per hour = $2,465	N/A	$2,465	$44,370
New modification	100 work-hours × $85 per hour = $8,500	$509	9,009	162,162

We estimate the following costs to do any necessary modifications that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need this modification:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	36 work-hours × $85 per hour = $3,060	$509	$3,569

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions for the inspections that are part of the new modification 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 removing Airworthiness Directive (AD) 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD.

(a) Comments Due Date

We must receive comments by January 27, 2017.

(b) Affected ADs

This AD replaces AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014) (''AD 2014–16–02'').

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes, certificated in any category, serial numbers 1004 through 1085 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Reason

This AD was prompted by reports of partial deployment of an engine thrust reverser in flight caused by a failure of the translating sleeve at the thrust reverser attachment points. We are issuing this AD to detect and correct cracks of the translating sleeve at the thrust reverser actuator attachment points, which could result in deployment or dislodgement of an engine thrust reverser in flight and subsequent reduced control of the airplane.

(f) Compliance

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

(g) Retained Airplane Flight Manual (AFM) Revision With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2014–16–02, with revised service information. Within 1 calendar day after August 12, 2014 (the effective date of AD 2014–16–02): Revise the applicable sections of the AFM to include the information specified in the temporary revisions (TRs) identified in paragraphs (g)(1) and (g)(2) of this AD, as applicable. These TRs introduce procedures to prohibit thrust reverser operation. Operate the airplane according to the limitations and procedures in the TRs identified in paragraphs (g)(1) and (g)(2) of this AD, as applicable. The revision required by paragraph (g) of this AD may be done by inserting copies of the applicable TRs identified in paragraphs (g)(1) and (g)(2) of this AD into the AFM. When these TRs have been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the applicable TRs, and the TRs may be removed.

(1) Canadair TR 600/29–2, dated June 20, 2014, to the Canadair CL–600–1A11 AFM; or Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM. As of the effective date of this AD, use only Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM.

(2) Canadair TR 600–1/24, dated June 20, 2014, to the Canadair CL–600–1A11 AFM (Winglets), including Erratum, Publication No. PSP 600–1AFM (US), TR No. 600–1/24, June 20, 2014; or Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets). As of the effective date of this AD, use only Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets).

(h) Retained Repetitive Inspections and Modifications, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2014–16–02, with revised service information. Within 25 flight cycles or 90 days, whichever occurs first, after August 12, 2014 (the effective date of AD 2014–16–02), do detailed inspections (including a borescope inspection) of both engine thrust reversers for cracks, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014; or Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(1) If no cracking is found during any inspection required by paragraph (h) of this AD, repeat the inspection required by paragraph (h) of this AD thereafter at intervals not to exceed 100 flight cycles until the repair or modification specified in paragraph (i) or (k) of this AD is done.

(2) If any cracking is found during any inspection required by paragraph (h) of this AD, before further flight, modify the thrust reversers on both engines, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014; or Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(i) Retained Optional Terminating Modification, With Revised Service Information

This paragraph restates the optional terminating action specified in paragraph (i) of AD 2014–16–02, with revised service information. Modifying the thrust reversers on both engines, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014; or Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016; terminates the inspections required by paragraph (h) of this AD. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(j) Retained Credit for Previous Actions, With No Changes

This paragraph restates the credit provided in paragraph (j) of AD 2014–16–02, with no changes. This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before August 12, 2014 (the effective date of AD 2014–16–02), using Bombardier Alert Service Bulletin A600–0769, dated June 19, 2014.

(k) New Requirement of This AD: Modification and Inspections

Within 24 months after the accomplishing the modification specified in paragraph (h)(2) of this AD, or within 48 months after

accomplishing the initial inspection required by paragraph (h) of this AD, whichever occurs later: Modify the thrust reversers on both engines, including doing the inspections specified in paragraphs (k)(1) through (k)(6) of this AD, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, except as required by paragraphs (m)(1) and (m)(2) of this AD. Modification of all thrust reversers terminates the requirements of paragraphs (g), (h), and (i) of this AD.

(1) Do general visual inspections of the flipper doors for cracks.

(2) Do a general visual inspection of the thrust reverser skin, frames, joints, splices, and fasteners for cracks.

(3) Do a general visual inspection of the thrust reverser for cracks.

(4) Do liquid penetrant or eddy current inspections, as applicable, of the frames for cracks.

(5) Do a detailed visual inspection of the frames for cracks and elongated holes, and do a liquid penetrant inspection of the frames for cracks.

(6) Do a liquid penetrant or an eddy current inspection of the translating sleeve skin for cracks.

(l) New Requirement of This AD: Repair

If, during any inspection required by paragraph (k) of this AD, any cracking or elongated hole is found, 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 Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(m) New Exceptions to Service Information

(1) If is not possible to follow all instructions specified in Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, during accomplishment of the actions required by paragraph (k) of this AD, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) Where Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, specifies to contact Bombardier if shim thickness is over the applicable thicknesses identified in Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 New York 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.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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 Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2014–19R1, dated March 14, 2016, 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–2015–7529.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America; toll-free telephone number 1–866–538–1247 or direct-dial telephone number 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport 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 November 18, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28622 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–8128; Airspace Docket No. 15–AEA–14]

Proposed Amendment of Class D and Class E Airspace; Elmira, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace designated as an extension to a Class D surface area at Elmira/Corning Regional Airport, Elmira, NY, as the ERINN Outer Marker has been decommissioned, requiring airspace reconfiguration at the airport. This action also would eliminate the Notice to Airmen (NOTAM) part time status of this Class E Airspace area. Additionally, this action would update the geographic coordinates of the airport for the Class D and Class E airspace areas listed in this proposal, and would enhance the safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before January 27, 2017.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20591–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2015–8128; Airspace Docket No. 15–AEA–14, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding 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 proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class D airspace, Class E Surface Area Airspace, and Class E Airspace Designated as an Extension to a Class D Surface Area at Elmira/Corning Regional Airport, Elmira, NY.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2015–8128; Airspace Docket No. 15–AEA–14) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–8128; Airspace Docket No. 15–AEA–14.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 to amend Class E Airspace designated as an extension to a Class D surface area at Elmira/Corning Regional Airport, Elmira, NY. The ERINN Outer Marker has been decommissioned, requiring airspace reconfiguration for the safety and management of IFR operations at the airport. This action also proposes to eliminate the NOTAM information that reads, ''This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.'' From the regulatory text of the above airspace as it is not needed to supplement the existing part-time Class D airspace surrounding the airport. The geographic coordinates of the airport would be amended for Class D and Class E airspace to be in concert with the FAAs aeronautical database.

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, and 6004, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Elmira, NY [Amended]

Elmira/Corning Regional Airport, NY
(Lat. 42°09′35″ N., long 76°53′30″ W.)

That airspace extending upward from the surface to and including 3,500 MSL within a 4.2-mile radius of the Elmira/Corning Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

AEA NY E2 Elmira, NY [Amended]

Elmira/Corning Regional Airport, NY
(Lat. 42°09′35″ N., long 76°53′30″ W.)

That airspace extending upward from the surface within a 4.2-mile radius of the Elmira/Corning Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AEA NY E4 Elmira, NY [Amended]

Elmira/Corning Regional Airport, NY
(Lat. 42°09′35″ N., long 76°53′30″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the 062° bearing from the airport extending from the 4.2-mile radius of Elmira/Corning Regional Airport to 6 miles northeast of the airport, and within 1.8 miles each side of the 101° bearing from the airport extending from the 4.2-mile radius to 1.2 miles east of the airport, and within 1.8 miles each side of the 248° bearing from the airport extending from the 4.2-mile radius to 7 miles southwest of the airport, and within 1.8 miles each side of the 282° bearing from the airport extending from the 4.2-mile radius to 8 miles northwest of the airport.

Issued in College Park, Georgia, on December 1, 2016.

Ryan W. Almasy,

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

[FR Doc. 2016–29632 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 923

Proposed Amendment to the Puerto Rico Coastal Zone Management Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, National Ocean Service, Department of Commerce.

ACTION: Request for Comments on preliminary findings and draft EA.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA) Office for Coastal Management is requesting comments on the preliminary findings and draft environmental assessment for a request from the Commonwealth of Puerto Rico for approval of amendments to the Puerto Rico Coastal Zone Management Program (PRCZMP). NOAA has determined that the amendments to the PRCZMP do not meet the requirements for approval. This determination is subject to change depending on public comments and further information that may be submitted by the Commonwealth. As part of its review of the amendments, NOAA developed a draft environmental assessment pursuant to the requirements of the National Environmental Policy Act for which comments are also requested.

DATES: Comments on the preliminary findings and draft environmental assessment must be received by February 13, 2017.

ADDRESSES: You may submit comments on the preliminary findings and/or draft environmental assessment by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit a comment, go to the docket for this review by typing ''NOAA–NOS–2016–0148'' into the search function on the *Regulations.Gov* Home Page.
- *Mail:* Submit written comments to Mr. Kerry Kehoe, Federal Consistency Specialist, Office for Coastal Management, NOAA, 1305 East-West Highway, 10th Floor, N/OCM6, Silver Spring, MD 20910. Attention: PRCZMP Amendment.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented and considered. Comments sent by any other method, to any other address or individual, or received after the end of the commend period may not be considered. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NOS will accept anonymous comments Enter ''N/A'' in the required fields if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Kehoe, Federal Consistency Specialist, Office for Coastal Management, NOAA, at 240–533–0782 or *kerry.kehoe@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The federal Coastal Zone Management Act provides incentives to states and U.S. territories to develop programs to manage coastal resources and uses. The PRCZMP was approved NOAA in 1978. Since that time, statutory and regulatory changes have been made to the organizational structure of the land use agencies which comprise the PRCZMP; the land use authority of local governments; and the permit decision-making process. These changes are in force and being implemented as laws of the Commonwealth pursuant to the Puerto Rico Permit Process Reform Act of 2009 (Law 161), as amended by Law 151 of 2013, and pursuant to the Autonomous Municipalities Act of 1991 (Law 81). In order to demonstrate that the program continues to meet the requirements for program approval established under the Coastal Zone Management Act and its implementing regulations, the Department of Natural and Environmental Resources has submitted these changes to NOAA for approval. Copies of the Commonwealth's submission are available on the Regulations.Gov Web site under the Docket No. ''NOAA–NOS–2016–0148.''

NOAA's Office for Coastal Management has determined that these changes are substantial and should be reviewed as a program amendment in accordance with 15 CFR part 923, subpart H. NOAA held a public hearing on the amendment in San Juan, Puerto Rico on September 2, 2015. The focus of the hearing was on whether the PRCZMP continues to meet the requirements for program approval as

specified in the Coastal Zone Management Program regulations at 15 CFR part 923. In addition to the hearing, NOAA solicited written comments from the public on the amendment.

NOAA is issuing preliminary findings on the request for approval of the amendments to the PRCZMP. Although most of the changes to the PRCZMP have been found to be approvable, NOAA has found that the fast-tracking of the permitting process does not provide a meaningful opportunity for public participation in the process. NOAA has also identified concerns with the placement of permitting authority in authorized professionals.

These preliminary findings are subject to change pending a response from the Commonwealth, and comments from the public.

NOAA has also completed a draft environmental assessment pursuant to the requirements of the National Environmental Policy Act for this review. Comments on the draft environmental assessment are also being solicited.

The preliminary findings and draft environmental assessment are available for review on the Regulations.Gov Web site under Docket No. ''NOAA–NOS–2016–0148.''

Federal Domestic Assistance Catalog 11.419.

Dated: December 2, 2016.

Christopher Cartwright,

Acting, Deputy Assistant Administrator for Ocean Services and Coastal Management, Coastal Zone Management Program Administration.

[FR Doc. 2016–29842 Filed 12–12–16; 8:45 am]

BILLING CODE 3510–08–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1241

[Docket No. CPSC–2006–0057]

Safety Standard for Portable Generators; Notice of Extension of Comment Period

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Extension of comment period.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) voted to publish a notice of proposed rulemaking (NPR) in the **Federal Register** on November 2, 2016, concerning portable generators. The NPR invited the public to submit written comments during a comment period that would close 75 days after the date of publication of the NPR in the **Federal Register**. In response to a request for an extension, the Commission is extending the comment period.

DATES: Submit comments by April 24, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2006–0057, 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. The Commission does not accept comments submitted by electronic mail (email), except through: *http://www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier, preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov* and insert the Docket No. CPSC–2006–0057 into the ''Search'' box and follow the prompts.

SUPPLEMENTARY INFORMATION: On November 2, 2016, the Commission voted to publish an NPR in the **Federal Register**, proposing standards that would apply to portable generators. The NPR was published on November 21, 2016, with a 75-day comment period that will close on February 6, 2017. The Commission issued the proposed rule under the authority of the Consumer Product Safety Act (CPSA). The Portable Generator Manufacturers' Association (PGMA) has requested an additional 75 days to do research, conduct testing, and review the portable generator briefing package and supporting documents to prepare public comments on the NPR.[1]

The Commission has considered this request and is extending the comment period for an additional 75 days until April 24, 2017.

Dated: December 8, 2016.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2016–29845 Filed 12–12–16; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2016–0036]

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Request for Information Related to Use of Clearview Font

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Request for Information.

SUMMARY: The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) is incorporated by reference in regulation, approved by FHWA, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. This document is a Request for Information (RFI) related to the use of the Clearview letter style on highway signs.

DATES: Responses to this RFI should be submitted by January 27, 2017. The FHWA will consider late-filed responses to the extent possible.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m.

[1] The Commission voted (4–1) to publish this notice in the **Federal Register**. Chairman Elliot F. Kaye and Commissioners Robert S. Adler, Joseph P. Mohorovic, and Marietta S. Robinson voted to approve publication of this notice. Commissioner Ann Marie Buerkle voted against publication of this notice.

and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

• *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Mr. Martin Calawa, MUTCD Team, FHWA Office of Transportation Operations, (603) 410–4864, or via email at *Martin.Calawa@dot.gov.* For legal questions, please contact Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, or via email at *William.Winne@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Purpose of the Request

On January 25, 2016, FHWA published a document in the **Federal Register** (81 FR 4083) officially terminating the Interim Approval for Use of Clearview Font for Positive Contrast Legends on Guide Signs (IA–5), which was issued September 2, 2004. The termination discontinued the provisional use of an alternative letter style in traffic control device applications. The result of this termination rescinded the allowance of the use of letter styles other than FHWA Standard Alphabets on traffic control devices except as provided otherwise in the MUTCD and within the document. Existing signs that use the provisional letter style and comply with IA–5 were unaffected by the termination and may remain in place as long as they are in serviceable condition. The termination did not create a mandate for the removal or installation of any sign.

Following the publication of the termination in the **Federal Register** and prior to its effective date, FHWA posted a Technical Memorandum [1] and a Technical Brief [2] on the MUTCD Web site. The Technical Memorandum provided guidance to the Federal-aid Highway division offices on implementation of the termination. The FHWA developed the Technical Brief for transportation agency use. It provided conclusions about the national experience with an alternative letter style and a discussion of the technical considerations that led to the termination of the Interim Approval.

After the publication of the termination, FHWA received comments from stakeholders suggesting that FHWA should have solicited public comment prior to the termination. Other comments suggested that FHWA did not consider all relevant research that was available in making its decision. As a result, FHWA is publishing this RFI in order to gather any information or research that FHWA may not have been aware of when the termination was prepared.

RFI Guidelines

This is not a solicitation for comments on the termination of IA–5 or for experimentation requests. The purpose of this RFI is to gather information, if any, that was not previously available to FHWA. Respondents should not include any information that might be considered proprietary or confidential.

The FHWA requests quantitative information from State and local agencies specifically related to their use of the Clearview font. Examples of the types of information we are seeking include: State or agency practice, such as the technical standards applied, including any deviations from the conditions of IA–5; factors considered in deciding to convert to the Clearview letter style or to retain or revert to the Standard Alphabets; in-service legibility evaluations; factors related to sign design or manufacturing; safety performance; economic implications; any simultaneous improvements made when converting to Clearview, such as changes to retroreflective sheeting or increases in letter height; or other similar types of information.

Conclusion

The FHWA based the termination of IA–5 on available relevant information and research. To ensure that FHWA has access to any additional information, FHWA requests any additional information regarding experience with the use of alternative fonts or research not otherwise known that may be useful to FHWA be submitted for further consideration.

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.85.

Issued on: December 7, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–29819 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–22–P

[1] Technical Memorandum can be accessed at the following Web address: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia5/ia5_termination.pdf.*

[2] Technical Brief, ''Manual on Uniform Traffic Control Devices for Streets and Highways: Termination of Interim Approval No. 5, Clearview Font for Positive Contrast Legends on Guide Signs,'' can be accessed at the following Web address: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia5/ia5_termtechbrief.pdf.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0455; FRL–9956–42–Region 3]

Determination of Attainment of the 2012 Annual Fine Particulate Matter Standard; Pennsylvania; Delaware County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Delaware County, Pennsylvania moderate nonattainment area (the Delaware County Area) has attained the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). This determination of attainment, also known as a clean data determination, is based upon quality assured, certified, and complete ambient air monitoring data showing that this area has monitored attainment of the 2012 annual $PM_{2.5}$ NAAQS based on the 2013–2015 data available in EPA's Air Quality System (AQS) database. If this determination is finalized, the requirements for the Delaware County Area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning state implementation plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. This action is being taken under the Clean Air Act (CAA).

In the Final Rules section of this **Federal Register**, EPA is making this determination of attainment 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 January 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0455 at *http://www.regulations.gov,* or via email to *pino.maria@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814–2042, or by email at *huang.gavin@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information about this determination of attainment of the 2012 annual $PM_{2.5}$ NAAQS for the Delaware County Area, 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: November 22, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–29747 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PS Docket Nos. 13–87 and 06–229, WT Docket No. 96–86; RM–11433 and RM–11577; Report No. 3060]

Petition for Partial Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's rulemaking proceeding, Chuck Powers, on behalf of Motorola Solutions, Inc.

DATES: Oppositions to the Petition must be filed on or before December 28, 2016. Replies to an opposition must be filed on or before January 9, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Clay DeCell, International Bureau, phone: (202) 418–0803, email: *Clay.DeCell@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3060, released December 1, 2016. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: *https://www.fcc.gov/ecfs/filing/10919110011734/document/10919110011734e7d2.* The Commission will not send a copy of this document pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this document does not have an impact on any rules of particular applicability.

Subject: Service Rules Governing Narrowband Operations in the 769–775/799–805 MHz Bands, FCC 16–111, Order on Reconsideration, published at 81 FR 66830, September 29, 2016, in PS Docket Nos. 13–87 and 06–229, WT Docket No. 96–86; RM–11433 and RM–11577. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–29827 Filed 12–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 16–1297; MB Docket No. 16–270; RM–11772]

Radio Broadcasting Services; Pima, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses the petition for rulemaking filed by 1TV.Com, Inc., (Petitioner), licensee of KIKO(FM), Claypool, Arizona, proposing to amend the FM Table of Allotments, by substituting noncommercial educational Channel *278A for Channel *296A at Pima, Arizona, to accommodate a hybrid application, requesting modification of the license for Station KIKO(FM) to specify operation on Channel 243C2 rather than Channel 247C2 at Claypool, Arizona. No comments or counterproposals were received by any parties. Petitioner did not file comments expressing a continuing interest in the proposed Pima allotment. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. We will not allot Channel *278A at Pima, Arizona.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 16–270, adopted November 17, 2016, and released November 18, 2016. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. This document is not subject to the Congressional Review Act. (The Commission is not required to submit a copy of this *Report and Order* to Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since the proposed petition for rule making is dismissed).

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2016–29903 Filed 12–12–16; 8:45 am]

BILLING CODE 6712–01–P

Notices

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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

Forest Service

Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII. Pub. L. 108–447)

AGENCY: Manti-La Sal National Forest, Forest Service, USDA.

ACTION: Notice of proposed new fee site.

SUMMARY: The Manti-La Sal National Forest is proposing to charge a fee at the Mammoth Administrative Site. Mammoth and Lake Cabins would be available June 5 to September 30 at $50.00 per night each. Either one or both cabins could be rented, but if both are rented, they must be to the same customer. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and improvements of these rental cabins.

An Analysis of the nearby private rental cabins with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through January 31, 2017. New fees would begin the spring of 2017.

ADDRESSES: Brian Pentecost, Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501.

FOR FURTHER INFORMATION CONTACT: Jessica Jewkes, Recreation Specialist, 435–636–3587. Information about proposed fee changes can also be found on the Manti-La Sal National Forest Web site: *http://www.fs.usda.gov/mantilasal.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice on the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting to reserve these cabins would need to do so through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777 when it becomes available.

Dated: December 6, 2016.

Brian M. Pentecost,

Forest Supervisor.

[FR Doc. 2016–29847 Filed 12–12–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Annual Survey of Entrepreneurs

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before February 13, 2017.

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 the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrice Norman, U.S. Census Bureau, EWD, 8K151, Washington, DC 20233–6600, (301) 763–7198, *Patrice.C.Norman@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is conducting the 2016 Annual Survey of Entrepreneurs (ASE). The ASE asks respondents of employer firms about the owner(s) and business characteristics, including questions on the gender, ethnicity, race, and veteran status of the principal owner(s). The 2016 ASE is conducted as a continuation of an annual collection of information on the characteristics of U.S. businesses and owners by gender, ethnicity, race, and veteran status. The survey is conducted jointly with the Ewing Marion Kauffman Foundation, a Missouri nonprofit corporation and a private foundation exempt from taxes under Section 501(c)(3) of the Internal Revenue Code, and the Minority Business Development Agency (MBDA) for reference years 2014, 2015 and 2016. The ASE supplements the five-year Survey of Business Owners (SBO) program and provides more timely updates on the status, nature, and scope of women-, minority-, and veteran-owned businesses. The ASE statistics are used by government program officials, industry organization leaders, economic and social analysts, and business entrepreneurs. Examples of data uses include:

- To assess business assistance needs and allocate available program resources
- To establish and evaluate contract procurement practices affecting small and disadvantaged businesses
- To create a framework for planning, directing, and assessing programs that promote the activities of disadvantaged groups
- To assess minority-owned businesses by industry and area and to educate industry associations, corporations, and government entities
- To analyze economic and demographic shifts and differences in ownership and performance among geographic areas
- To analyze business operations in comparison to similar firms, compute market share, and assess business growth and future prospects

The ASE consists of questions from the 2012 SBO (form SBO–1) with additional questions about sources of capital and financial barriers that are asked each survey year. The ASE is designed to ask a series of new questions each survey year based on a relevant business topic determined prior to data collection. Each year the new

module of questions is submitted to the Office of Management and Budget (OMB) for approval. The module selected for the 2016 ASE focuses on business advice and planning. The 2016 ASE also includes additional questions on business financing relationships, owner demographics, and regulations. The Census Bureau is requesting approval to field the 2016 ASE in July 2017. The following module and additional questions will be added for the 2016 ASE:

- Number of Businesses Previously Owned—Prior to establishing, purchasing, or acquiring this business, how many previous businesses has Owner 1 owned? (Include self-employed businesses.)
  - ☐ 0
  - ☐ 1
  - ☐ 2
  - ☐ 3
  - ☐ 4
  - ☐ 5 or more
- Field of Highest Degree—Prior to establishing, purchasing, or acquiring this business, what was the field of the highest degree completed for Owner 1? Select all that apply.
  - ☐ Natural and Physical Sciences
  - ☐ Law or Legal Studies
  - ☐ Information Technology or Computer Science
  - ☐ Mathematics, Economics, or Statistics
  - ☐ Engineering and Related Technologies
  - ☐ Architecture and Building
  - ☐ Business or Finance
  - ☐ Education
  - ☐ Health, Medicine, or Pharmacy
  - ☐ Social Sciences
  - ☐ Humanities or Arts
  - ☐ Agriculture, Environmental and Related
  - ☐ Food, Hospitality, or Personal Services
  - ☐ Other (Specify)
  - ☐ No Bachelor's, Master's, Doctorate, or Professional Degree
- Business Banking Relationships—In 2016, were this business's banking relationships with the same financial institutions as any of the owners' personal banking relationships? Banking relationships include business checking or savings accounts, credit cards, loans, etc. Select one box only.
  - ☐ All of the banking relationships were the same
  - ☐ Some of the banking relationships were the same
  - ☐ None of the banking relationships were the same—Skip to Outstanding Loans
  - ☐ The owners had no business banking relationships—Skip to Outstanding Loans
- Banking Relationship Duration—How long were the owners' personal banking relationships in place before financial transactions were first conducted by this business? Select one box only.
  - ☐ 0–1 month
  - ☐ 2–5 months
  - ☐ 6–12 months
  - ☐ More than 12 months
- Outstanding Loans—In 2016, was this business required to provide collateral or loan guarantee for any outstanding loan the business obtained? Select one box only.
  - ☐ Business did not have an outstanding loan
  - ☐ Yes
  - ☐ No
  - ☐ Do not know
- Purchases on Account—In 2016, did this business make any purchases on account or using trade credits? Trade credits are invoice payment terms a business establishes with their suppliers allowing them to purchase goods or services now and at a later date.
  - ☐ Yes
  - ☐ No
- Negative Impact on Profitability—For 2016, did each of the following negatively impact the profitability of this business? Select one box in each row.

	Yes	No
Access to financial capital	☐	☐
Cost of financial capital	☐	☐
Finding qualified labor	☐	☐
Taxes	☐	☐
Government regulations (federal, state and/or local)	☐	☐
Slow business or lost sales	☐	☐
Customers or clients not making payments or paying late	☐	☐
The unpredictability of business conditions	☐	☐
Changes or updates in technology	☐	☐
Other (Specify)	☐	☐

- Impact on Regulations—For 2016, which impact did each of the following government regulations have on the business profitability? Select one box in each row.

	Very negative	Somewhat negative	Neutral	Somewhat positive	Very positive	N/A
Employee hiring	☐	☐	☐	☐	☐	☐
Workers' compensation	☐	☐	☐	☐	☐	☐
Occupational health and safety	☐	☐	☐	☐	☐	☐
Health insurance	☐	☐	☐	☐	☐	☐
Employment records	☐	☐	☐	☐	☐	☐
Business and professional licensing	☐	☐	☐	☐	☐	☐
Building and renovation permits	☐	☐	☐	☐	☐	☐
Business registration	☐	☐	☐	☐	☐	☐
Health permits and inspections	☐	☐	☐	☐	☐	☐
Environmental	☐	☐	☐	☐	☐	☐
Trade	☐	☐	☐	☐	☐	☐
Financial regulations	☐	☐	☐	☐	☐	☐
Other (Specify)	☐	☐	☐	☐	☐	☐

- Regulations and Starting or Acquiring the Business—What impact did regulations have on the ability to initially start or acquire this business?
  - ☐ Positive impact
  - ☐ Negative impact
  - ☐ No impact
  - ☐ Do not know
- Regulations and Growth of the Business—During 2016, what impact did regulations have on expanding the business operations, such as by

increasing production, adding locations, or attaining new customers?
- ☐ Positive impact
- ☐ Negative impact
- ☐ No impact
- ☐ Business did not plan to expand operations
- ☐ Do not know

○ Reasons for Seeking Business Advice—During 2016, what was this business's primary reason for seeking paid or unpaid business advice or mentoring from others? Select all that apply.
- ☐ Business finances
- ☐ Employee relations (for example, hiring, workforce retention, employee performance/growth, employee separation)
- ☐ Management and day-to-day operations
- ☐ Product development and innovation
- ☐ Investment and access to capital
- ☐ Succession planning and exit strategy
- ☐ Increasing sales
- ☐ Reducing costs
- ☐ Taxes and accounting
- ☐ Regulatory compliance
- ☐ Technology/Information Technology
- ☐ Key performance indicators and business targets
- ☐ Copyrights, trademarks, and patents
- ☐ Did not seek advice/mentoring—Skip to Exit Strategy

○ Providers of Business Advice—During 2016, from whom did this business seek the advice or mentoring selected in the 'Reasons for Seeking Business Advice' question? Select all that apply.
- ☐ Family (Family refers to spouses, unmarried partners, parents/guardians, children, siblings, or close relatives.)
- ☐ Friends
- ☐ Professional colleagues
- ☐ Employees
- ☐ Professional consultants
- ☐ Customers
- ☐ Suppliers
- ☐ Government-supported technical assistance programs (for example, Small Business Administration (SBA), Small Business Development Center, Women's Business Center, or Minority Business Development Agency (MBDA) Business Center)
- ☐ Other (Specify)

○ Outcome of Advice or Mentoring—During 2016, did the advice or mentoring selected in the 'Reasons for Seeking Business Advice' question lead to positive business outcomes or changes in business operations that are anticipated to be positive? delete quotes
- ☐ Yes
- ☐ No

○ Exit Strategy—Which of the following best describes this business's current exit strategy for any of the owners? An exit strategy is a plan the business owners create to describe how they intend to exit the business and capture their investment. Select all that apply.
- ☐ Walk away from the business
- ☐ Liquidate or sell off assets and repay the business's liabilities
- ☐ Sell the business to employees or managers (for example, offer an Employee Stock Ownership Program (ESOP), management buyout, or employee buyout)
- ☐ Sell or merge the business with another firm
- ☐ Sell the business to another individual that is not an owner of the same business
- ☐ Sell or transfer ownership to another owner of the same business
- ☐ Sell or transfer ownership of the business to a family member(s) that is not an owner of the same business
- ☐ Prepare an Initial Public Offering (IPO)
- ☐ Other (Specify)
- ☐ Business does not currently have an exit strategy

The module selected for the 2014 ASE focused on business innovation and research and development (R&D) activity. The goal of the 2014 module was to identify new forms of innovation, identify characteristics of businesses that are innovators, and measure R&D activity conducted by entrepreneurs. The questions selected asked about process and product innovation, R&D costs, R&D funding, R&D purchases, and R&D employees. The questions were based on the Microbusiness Innovation Science and Technology Survey (MIST) conducted by the National Science Foundation's (NSF) National Center for Science and Engineering Statistics (NCSES). The 2014 ASE module was approved by OMB on September 4, 2015, and fielded in September 2015. Results from the 2014 ASE were published in September 2016.

The module selected for the 2015 ASE focused on business management practices. The goal of the 2015 module was to measure how management practices impact productivity and growth. The questions selected asked about the use of targets and key performance indicators, record-keeping, and personnel practices. Some questions on the 2015 ASE module were based on the Management and Organizational Practices Survey (MOPS) conducted by the Census Bureau. The 2015 ASE module was approved by OMB on June 1, 2016, and fielded in July 2016. Results from the 2015 ASE are tentatively scheduled to be published in July 2017.

Businesses which reported business activity on any one of the following Internal Revenue Service tax forms are eligible for selection: 1040 (Schedule C), ''Profit or Loss from Business (Sole Proprietorship); 1065, ''U.S. Return of Partnership Income''; 941, ''Employer's Quarterly Federal Tax Return''; 944, ''Employer's Annual Federal Tax Return''; or any one of the 1120 corporate tax forms. The ASE only requests responses from businesses filing the 941, 944, or 1120 tax forms. Estimates for businesses filing the 1040 or 1065 tax returns are created using statistical modeling of administrative data and will only provide data by race, gender, ethnicity, and veteran status by geography, industry, and size of firm.

For the 2016 ASE, cognitive interviews were conducted under separate clearance with 15 to 20 businesses in two rounds. Round one interviews were conducted in October 2016, followed by round two in December 2016. The questionnaire and the interview protocol were updated for each round to reflect changes based on testing feedback. The 2016 ASE data collection period is planned for July 2017 through December 2017. Results of the 2016 ASE are tentatively scheduled to be published in July 2018.

In preparation for the 2017 SBO, the 2016 ASE will include a set of questions to test new content for a small subset of respondents. Approximately 2,900 respondents (one percent of the survey sample) will follow an alternate path of questions as a test for the 2017 SBO. The majority of respondents will follow the traditional survey path (the base ASE questions plus the module). The test respondents will also follow the traditional survey path and module, with the addition of six questions on ownership (noted below). The test path will provide more comprehensive information as input into the 2017 SBO content development. This method of testing will offer a much larger pool of respondents than cognitive testing alone would allow. The test path questions include:

○ Ownership or Operation—In 2016, was this business owned or operated by spouses or unmarried partners?
- ☐ Yes
- ☐ No (skip to Family Ownership)

○ Joint Ownership—In 2016, was this business jointly owned by spouses or unmarried partners?
- ☐ Yes
- ☐ No

○ Equal Operation—In 2016, was this business equally operated by spouses or unmarried partners?
- ☐ Yes
- ☐ No, primarily operated by Owner 1 (autofill)
- ☐ No, primarily operated by Owner 2 (autofill)

○ Family Ownership—In 2016, did two or more members of one family own more than 50% of this business? (Family refers to spouses, unmarried partners, parents/guardians, children, siblings or close relatives.)
- ☐ Yes
- ☐ No

○ Number of Owners—In 2016, how many people owned this business?
- ▪ *Do not combine two or more owners to create one owner.*

▪ *Count spouses and partners as separate owners.*

☐ 1 person
☐ 2 people
☐ 3 people
☐ 4 people
☐ 5–10 people
☐ 11 or more people
☐ Business is owned only by a parent company, estate, trust, or entity
☐ Business is owned by a combination of individuals and parent companies, estates, trusts, or entities

○ 10% or More Ownership—In 2016, did at least one person own 10% or more of this business? (Do not count parent companies, estates, trusts or other entities).

☐ Yes
☐ No—Select ''No'' ONLY if no person owned 10% or more of this business

II. Method of Collection

The Census Bureau uses a letter-only mail out with an electronic-only data collection for the ASE. The mail out will be conducted from the National Processing Center in Jeffersonville, Indiana. Two mail follow-ups to nonrespondents will be conducted at approximately one-month intervals. The second follow-up of the 2014 ASE included a certified mailing for all nonrespondents. The 2015 ASE included a certified mailing for only a selected group of nonrespondents based on their sampling frame; the other nonrespondents received a standard first-class follow-up mailing. The 2016 ASE collection strategy will be similar to the 2015 ASE. Select nonrespondents will receive a certified mailing for the second follow-up if needed.

III. Data

OMB Control Number: 0607–0986.

Form Number(s): ASE–L1 & ASE–L2, Annual Survey of Entrepreneurs initial letter and follow-up letter.

Type of Review: Regular submission.

Affected Public: Large and small employer businesses.

Estimated Number of Respondents: 290,000.

Estimated Time per Response: 35 minutes.

Estimated Total Annual Burden Hours: 169,167.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 8(b), 131 and, 182; Section 1(a)(3) of Executive Order 11625.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–29866 Filed 12–12–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on drawn stainless steel sinks from the People's Republic of China (PRC) for the period of review (POR) April 1, 2015, through March 31, 2016.

DATES: Effective December 13, 2016.

FOR FURTHER INFORMATION CONTACT: Brandon Custard, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1823.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2016, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on drawn stainless steel sinks from the PRC for the POR (AD order).[1]

In April 2016, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on drawn stainless steel sinks from the PRC.

On June 6, 2016, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of initiation of an administrative review of the AD order.[2] The administrative review was initiated with respect to 32 companies, and covers the period April 1, 2015, through March 31, 2016. Subsequent to the initiation of the administrative review, the requesting parties timely withdrew their review requests for 19 of these companies, as discussed below.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the following companies within 90 days of the date of publication of the *Initiation Notice:*[3] Elkay (China) Kitchen Solutions, Co., Ltd.; Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guangdong G-Top Import & Export Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co. Ltd.; J&C Industries Enterprise Limited; Jiangmen Pioneer Import & Export Co., Ltd.; Jiangmen Xinhe Stainless Steel Products Co., Ltd.; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Primy Cooperation Limited; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Shunde Native Produce Import and Export Co., Ltd. of Guangdong; Zhongshan Newecan Enterprise Development Corporation; Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong; and Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 18826 (April 1, 2016).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 36268 (June 6, 2016) (*Initiation Notice*).

[3] *See* Letter from Elkay Manufacturing Company (the petitioner) to the Department dated August 18, 2016. While the petitioner also submitted a letter on September 6, 2016, withdrawing its request for an administrative review of Guangdong Dongyuan Kitchenware Industrial Co., Ltd. and Guangdong Yingao Kitchen Utensils Co., Ltd., we note that other parties requested administrative reviews of these companies that were not withdrawn.

Accordingly, the Department is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 353.213(d)(1).[4]

The instant review will continue with respect to the following companies: B&R Industries Limited; Feidong Import and Export Co., Ltd.; Foshan Zhaoshun Trade Co., Ltd.; Guangdong Dongyuan Kitchenware Industrial Co., Ltd.; Guangdong New Shichu Import & Export Company Limited; Guangdong Yingao Kitchen Utensils Co., Ltd.; Jiangmen Hongmao Trading Co., Ltd.; Jiangmen New Star Hi-Tech Enterprise Ltd.; KaiPing Dawn Plumbing Products, Inc.; Ningbo Afa Kitchen and Bath Co., Ltd.; Xinhe Stainless Steel Products Co., Ltd.; Yuyao Afa Kitchenware Co., Ltd.; and Zhongshan Superte Kitchenware Co., Ltd.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

[4] As stated in *Change in Practice in NME Reviews,* the Department will no longer consider the non-market economy entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings; Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 3, 2013).

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: December 7, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–29846 Filed 12–12–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–991]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent To Rescind Review, in Part; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that countervailable subsidies are being provided to producers and exporters of chlorinated isocyanurates (''chloro isos'') from the People's Republic of China (the ''PRC''). Interested parties are invited to comment on this preliminary determination.

DATES: Effective December 13, 2016.

FOR FURTHER INFORMATION CONTACT: Omar Qureshi or Andrew Devine, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202.482.5307 or 202.482.0238, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are chloro isos, which are derivatives are cyanuric acid, described as chlorinated s-triazine triones.[1] Chloro isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes; the written product description of the scope of the order is dispositive.

Methodology

On November 13, 2014, the Department published in the **Federal Register** a countervailing duty (''CVD'') order on chloro isos from the PRC.[2] The Department is conducting this administrative 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 preliminarily find that there is a subsidy (*i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient), and that the subsidy is specific.[3] In making this preliminary determination, the Department relied, in part, on facts otherwise available, with the application of adverse inferences.[4] For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

[1] For a complete description of the Scope of the Order, *see Countervailing Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Decision Memorandum for the Preliminary Results,* published concurrently with this notice (''Preliminary Decision Memorandum'').

[2] *Id.*

[3] *See* Sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[4] *See* Section 776(a) of the Act.

Intent To Rescind Administrative Review, In Part

On May 16, 2016, the Department received a timely response indicating that Juancheng Kangtai Chemical Co., Ltd. (''Kangtai'') made no shipments to the United States during the POR, as part of its response to the Department's initial CVD questionnaire. Because there is no evidence on the record to the contrary, pursuant to 19 CFR 351.213(d)(3), we preliminarily intend to rescind the review with respect to Kangtai. A final decision regarding whether to rescind the review of this company will be issued with the final results of review.

Preliminary Results of Review

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an estimated individual countervailable subsidy rate for each producer/exporter of the subject merchandise individually investigated. We preliminarily determine these rates to be:

Company	Subsidy rate
Hebei Jiheng Chemical Co., Ltd. (''Hebei Jiheng'')	20.94
Heze Huayi Chemical Co., Ltd. (''Huayi'')	1.04

Disclosure and Public Comment

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the publication of these preliminary results.[5] The Department also intends to issue a post-preliminary analysis memo on the Export Buyer's Credit program, as discussed in the Preliminary Decision Memorandum. Interested parties may submit written comments (case briefs) [6] within 30 days of the issuance of the post-preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[7] Rebuttal briefs must be limited to issues raised in the case briefs.[8] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[10] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[11] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[12] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: December 5, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Intent to Partially Rescind Review
IV. Scope of the Order
V. Application of CVD Law to Imports From the PRC
VI. Subsidies Valuation
VII. Benchmarks
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Analysis of Programs
X. Disclosure and Public Comment
XI. Conclusion

[FR Doc. 2016–29844 Filed 12–12–16; 8:45 am]

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[5] *See* 19 CFR 351.224(b).

[6] *See generally* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[8] *See* 19 CFR 351.309(d)(2).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310.

[12] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Preliminary Results of the 2015 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting an administrative review of the antidumping duty (''AD'') order on potassium permanganate from the People's Republic of China (the ''PRC''). The period of review (''POR'') is January 1, 2015 through December 31, 2015. The Department preliminarily determines that Potassium Permanganate from the PRC is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated weighted-average dumping margin is shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective December 13, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–6491.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2016, the Department initiated an administrative review of the antidumping order on potassium permanganate from the PRC.[1] Between April and September 2016, the Department sent its initial and supplemental questionnaires to Pacific Accelerator Limited (''PAL''), to which it responded in a timely manner. On August 25, 2016, the Department partially extended the deadline for issuing the preliminary results until November 1, 2016.[2] On October 20, 2016, the Department partially extended the deadline for issuing the preliminary results until December 1, 2016.[3]

Scope of the Order

Imports covered by the order are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 2841.61.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS item number is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

Methodology

The Department is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Tariff Act of 1930, as amended (the ''Act''). Export prices were calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (''NME'') within the meaning of section 771(18) of the Act, NV was calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

PRC-Wide Entity

Under the Department's policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* 128.94 percent) is not subject to change.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period January 1, 2015, through December 31, 2015:

Exporter	Weighted-average margin (USD/kilogram)
Pacific Accelerator Limited ...	$4.03

Disclosure, Public Comment and Opportunity To Request a Hearing

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[4] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[5] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[6] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[7] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[8] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* is zero or *de minimis,* the Department will instruct CBP to

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 11179 (March 3, 2016) (''*Initiation Notice*'').

[2] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Potassium Permanganate from the People's Republic of China: Extension of Deadline for Preliminary Results of the Antidumping Duty Administrative Review,'' dated August 25, 2016.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Potassium Permanganate from the People's Republic of China: Extension of Deadline for Preliminary Results of the Antidumping Duty Administrative Review,'' dated October 20, 2016.

[4] *See* 19 CFR 351.309(c)(1)(ii).

[5] *See* 19 CFR 351.309(d)(1)–(2).

[6] *See* 19 CFR 351.309(c)(2), (d)(2).

[7] *See* 19 CFR 351.212(b).

[8] *See* 19 CFR 351.212(b)(1).

liquidate appropriate entries without regard to antidumping duties.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Case History
3. Scope of the Order
4. Discussion of the Methodology
   a. Non-Market Economy Country Status
   b. Separate Rates
   c. PRC-Wide Entity
   d. Surrogate Country
   e. Comparisons to Normal Value
   f. Determination of Comparison Method
   g. Results of Differential Pricing Analysis
   h. Date of Sale
   i. Export Price
   j. Value Added Tax
   k. Normal Value
   l. Factor Valuations
   m. Currency Conversion
5. Recommendation

[FR Doc. 2016–29843 Filed 12–12–16; 8:45 am]

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[9] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Building for Environmental and Economic Sustainability (BEES) Please

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 13, 2017.

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 the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joshua D. Kneifel, (301) 975–6857 or *joshua.kneifel@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Over the last 23 years, the Engineering Laboratory of the National Institute of Standards and Technology (NIST) has developed and automated an approach for measuring the life-cycle environmental and economic performance of building products. Known as BEES (Building for Environmental and Economic Sustainability), the tool reduces complex, science-based technical content (*e.g.,* over 500 material and energy flows from raw material extraction through product disposal) to decision-enabling results and delivers them in a visually intuitive graphical format. BEES Please is a voluntary program to collect data from product manufacturers so that the environmental performance of their products may be evaluated scientifically using BEES. NIST will publish in BEES Online (*http://ws680.nist.gov/bees*) an aggregated version of the data collected from manufacturers that protects data confidentiality, subject to manufacturer's review and approval. BEES measures environmental performance using the environmental life-cycle assessment approach specified in the International Organization for Standardization (ISO) 14040 series of standards. All stages in the life of a product are analyzed: Raw material acquisition, manufacture, transportation, installation, use, and recycling and waste management. Economic performance is measured using the ASTM International standard life-cycle cost method (E 917), which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal.

II. Method of Collection

Data on materials use, energy consumption, waste, and environmental releases will be collected using an electronic, MS Excel-based questionnaire. An electronic, MS Word-based User Manual accompanies the questionnaire to help in its completion.

III. Data

OMB Control Number: 0693–0036.

Form Number(s): None.

Type of Review: Renewal (of a current information collection) with changes.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 30.

Estimated Time per Response: 62 hours and 30 minutes.

Estimated Total Annual Burden Hours: 1875.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–29778 Filed 12–12–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE808

Record of Decision for the Kalamazoo River Natural Resources Damage Assessment: Final Restoration Plan and Programmatic Environmental Impact Statement

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

ACTION: Notice of availability of a Record of Decision.

SUMMARY: The NOAA National Marine Fisheries Service (NMFS) announces the availability of the Record of Decision (ROD) for the Kalamazoo River Natural Resources Damage Assessment: Final Restoration Plan and Programmatic Environmental Impact Statement (PEIS). The NMFS Office of Habitat Conservation Director signed the ROD on November 29, 2016, which constitutes the agency's final decision.

ADDRESSES: Patricia A. Montanio, Director, Office of Habitat Conservation, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Julie Sims, NOAA Restoration Center, 4840 South State Road, Ann Arbor, Michigan 48108–9719.

SUPPLEMENTARY INFORMATION: The Kalamazoo River Trustees prepared the *Final Restoration Plan and Programmatic Environmental Impact Statement for Restoration Resulting from the Kalamazoo River Natural Resource Damage Assessment* (Final RP/PEIS). The RP/PEIS was prepared under the authority of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 and was also developed to comply with the Federal agency decision-making requirements of the National Environmental Policy Act of 1969 (NEPA) and NOAA's environmental review procedures (NOAA Administrative Order 216–6, as preserved by NAO 216–6A). The document was designed to solicit public opinion on a proposed restoration program for the Kalamazoo River natural resource damage assessment (NRDA). This ROD documents the Trustees' decision to select Alternative C and conduct restoration within the Kalamazoo River watershed (described in the RP/PEIS in Section 3.2.3). This alternative would consist of a mixture of aquatic habitat restoration, riparian and wetland habitat restoration, dam removal for river and fish passage restoration, and habitat conservation actions in the Kalamazoo River watershed, including potential projects in tributaries. Through this alternative, the Trustees could conduct restoration actions in locations that have not been affected by PCBs, including projects in tributaries other than Portage Creek, and in remediated areas that were previously contaminated with PCBs. This alternative also includes the two specific projects to restore aquatic connectivity on the Kalamazoo River by removing dams in and near Otsego, Michigan. The Trustees selected this alternative since it allows the most flexibility to meet the Trustees' restoration objectives, both in terms of geographic location and timing. The scale of restoration activity that will be implemented by the Trustees under the RP/PEIS will depend upon the resolution of natural resource damage claims with the parties responsible for poly-chlorinated biphenyl releases. Under CERCLA, settlements received by the Trustees, either through negotiated or adjudicated processes, must be used to restore, rehabilitate, replace, and/or acquire the equivalent of those natural resources that have been injured. The Final RP/PEIS will guide future Trustee decision-making regarding the expenditure of settlements and the implementation of restoration activities.

The NOAA RC is not soliciting comments on the PEIS but will consider any comments submitted that would assist us in preparing future NEPA documents. An electronic copy of the PEIS is available at: *https://darrp.noaa.gov/sites/default/files/case-documents/Final_Restoration_Plan_and_Programmatic_Environmental_Impact_Statement_for_Restoration_Resulting_from_the_Kalamazoo_River_Natural_Resource_Damage_Assessment.pdf.* Electronic correspondence regarding it can be submitted to *rc.compliance@noaa.gov.* Otherwise, please submit any written comments via U.S. mail to the responsible official named in the **ADDRESSES** section.

Dated: December 7, 2016.

Carrie Selberg,

Deputy Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2016–29792 Filed 12–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF038

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Programs

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

ACTION: Notice of standard prices and fee percentage.

SUMMARY: NMFS publishes the individual fishing quota (IFQ) standard prices and fee percentage for cost recovery for the IFQ Program for the halibut and sablefish fisheries of the North Pacific (IFQ Program). The fee percentage for 2016 is 3.0 percent. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2016 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2017.

DATES: Effective December 13, 2016.

FOR FURTHER INFORMATION CONTACT: Carl Greene, Fee Coordinator, 907–586–7105.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the IFQ Program in the North Pacific. The IFQ Program is a limited access system authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Program began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended to, among other purposes, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual quota program.'' This requirement was further amended in 2006 to include collection of the actual costs of data collection, and to replace the reference to ''individual quota program'' with a more general reference to ''limited access privilege program'' at section 304(d)(2)(A). Section 304(d)(2) of the Magnuson-Stevens Act also specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations in § 679.45 implementing cost recovery for the IFQ Program (65 FR 14919). Under the regulations, an IFQ permit holder must pay a cost recovery fee for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting IFQ fee payment(s) to NMFS on or before the due date of January 31 of the year following the year in which the IFQ landings were made. The total dollar amount of the fee due is determined by multiplying the NMFS published fee percentage by the ex-vessel value of all IFQ landings made on the permit(s) during the IFQ fishing year. As required by § 679.45(d)(1) and (d)(3)(i), NMFS publishes this notice of the fee percentage for the halibut and sablefish IFQ fisheries in the **Federal Register** during or before the last quarter of each year.

Standard Prices

The fee is based on the sum of all payments made to fishermen for the sale of the fish during the year. This includes any retro-payments (*e.g.,* bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: Actual and standard. Actual ex-vessel value is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. Standard ex-vessel value is the default value used to calculate the fee. IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document it; otherwise, the standard ex-vessel value is used.

Section 679.45(b)(3)(iii) requires the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard ex-vessel values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. According to § 679.2, IFQ equivalent pound(s) means the weight amount, recorded in pounds, and calculated as round weight for sablefish and headed and gutted weight for halibut, for an IFQ landing. The weight of halibut in pounds landed as guided angler fish is converted to IFQ equivalent pound(s) as specified in § 300.65(c) of this title. NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port-group. The standard prices for IFQ halibut and IFQ sablefish are listed in the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

NMFS calculates the fee percentage each year according to the factors and methods described at § 679.45(d)(2). NMFS determines the fee percentage that applies to landings made in the previous year by dividing the total costs directly related to the management, data collection, and enforcement of the IFQ Program (management costs) during the previous year by the total standard ex-vessel value of IFQ halibut and IFQ sablefish landings made during the previous year (fishery value). NMFS captures the actual management costs associated with certain management, data collection, and enforcement functions through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. NMFS calculates the fishery value as described under the section, Standard Prices.

Using the fee percentage formula described above, the estimated percentage of management costs to fishery value for the 2016 calendar year is 3.1 percent of the standard ex-vessel value; except the fee percentage amount must not exceed 3.0 percent pursuant section 304(d)(2)(B) of the Magnuson-Stevens Act. Therefore, the 2016 fee percentage is set at 3.0 percent. An IFQ permit holder is to use the fee percentage of 3.0 percent to calculate his or her fee for IFQ equivalent pound(s) landed during the 2016 halibut and sablefish IFQ fishing season. An IFQ permit holder is responsible for submitting the 2016 IFQ fee payment to NMFS on or before January 31, 2017. Payment must be made in accordance with the payment methods set forth in § 679.45(a)(4). NMFS no longer accepts credit card information by phone or in-person for fee payments. NMFS has determined that the practice of accepting credit card information by phone or in-person no longer meets agency standards for protection of personal financial information (81 FR 23645; April 22, 2016).

The 2016 fee percentage of 3.0 percent is unchanged from the 2015 fee percentage of 3.0 percent (80 FR 78172; December 16, 2015). Between 2015 and 2016, there was a 5 percent increase in management costs. NMFS incurred higher costs in 2015 due to additional costs to maintain permit databases; however, other costs decreased, therefore the change in overall management costs was limited. The value of halibut and sablefish harvests under the IFQ Program also increased by 3 percent from 2015 to 2016. This increase in value of the fishery offset some of the increase in management costs, which limited the change in the fee percentage between 2015 and 2016.

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2016 IFQ SEASON

[Registered Buyer Standard Ex–Vessel Prices by Landing Location for 2015 IFQ Season] [1]

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish Standard ex-vessel price
Cordova	March 31	-	-
	April 30	-	-
	May 31	-	-

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2016 IFQ SEASON—Continued

[Registered Buyer Standard Ex–Vessel Prices by Landing Location for 2015 IFQ Season [1]]

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish Standard ex-vessel price
	June 30	-	-
	July 31	7.17	-
	August 31	-	-
	September 30	-	-
	October 31	-	-
	November 30	-	-
Homer	March 31	-	-
	April 30	6.69	3.97
	May 31	6.99	4.21
	June 30	7.32	4.17
	July 31	7.20	-
	August 31	7.27	4.39
	September 30	6.96	4.68
	October 31	6.96	4.68
	November 30	6.96	4.68
Ketchikan	March 31	6.51	-
	April 30	6.72	-
	May 31	6.77	-
	June 30	6.77	-
	July 31	6.69	-
	August 31	6.76	-
	September 30	7.15	5.20
	October 31	7.15	5.20
	November 30	7.15	5.20
Kodiak	March 31	6.40	-
	April 30	6.52	4.01
	May 31	6.51	4.05
	June 30	6.54	3.95
	July 31	6.70	4.36
	August 31	6.85	4.38
	September 30	6.78	4.49
	October 31	6.78	4.49
	November 30	6.78	4.49
Petersburg	March 31	-	-
	April 30	-	-
	May 31	6.65	-
	June 30	6.63	-
	July 31	-	-
	August 31	6.97	-
	September 30	-	-
	October 31	-	-
	November 30	-	-
Seward	March 31	6.57	3.94
	April 30	6.69	-
	May 31	6.88	4.02
	June 30	7.21	-
	July 31	-	-
	August 31	-	-
	September 30	6.96	4.87
	October 31	6.96	4.87
	November 30	6.96	4.87
Sitka	March 31	6.48	-
	April 30	-	-
	May 31	6.45	-
	June 30	6.45	-
	July 31	-	-
	August 31	-	-
	September 30	-	-
	October 31	-	-
	November 30	-	-
Port Group Bering Sea [2]	March 31	-	-
	April 30	-	-
	May 31	6.04	-
	June 30	6.10	4.19
	July 31	6.08	5.14
	August 31	6.17	4.64
	September 30	6.17	4.82

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2016 IFQ SEASON—Continued

[Registered Buyer Standard Ex–Vessel Prices by Landing Location for 2015 IFQ Season] [1]

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish Standard ex-vessel price
	October 31	6.17	4.82
	November 30	6.17	4.82
Port Group Central Gulf [3]	March 31	6.58	3.95
	April 30	6.63	3.91
	May 31	6.76	4.03
	June 30	7.10	4.09
	July 31	7.14	4.32
	August 31	7.03	4.36
	September 30	6.91	4.75
	October 31	6.91	4.75
	November 30	6.91	4.75
Port Group Southeast [4]	March 31	6.56	3.89
	April 30	6.56	3.94
	May 31	6.60	4.38
	June 30	6.68	4.51
	July 31	6.76	4.68
	August 31	6.95	4.74
	September 30	6.92	5.13
	October 31	6.92	5.13
	November 30	6.92	5.13
All-Alaska [5]	March 31	6.55	3.90
	April 30	6.57	3.97
	May 31	6.66	4.14
	June 30	6.82	4.25
	July 31	6.79	4.56
	August 31	6.80	4.48
	September 30	6.72	4.91
	October 31	6.72	4.91
	November 30	6.72	4.91
All [6]	March 31	6.55	3.90
	April 30	6.57	3.97
	May 31	6.82	4.14
	June 30	6.79	4.25
	July 31	6.80	4.56
	August 31	6.72	4.48
	September 30	6.72	4.91
	October 31	6.72	4.91
	November 30	6.72	4.94

[1] Note: In many instances prices have not been reported to comply with confidentiality guidelines that prevent price reports when there are fewer than three processors operating in a location during a month.

[2] *Landing locations Within Port Group—Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[3] *Landing Locations Within Port Group—Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

[4] *Landing Locations Within Port Group—Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[5] *Landing Locations Within Port Group—All:* For Alaska: All landing locations included in 2, 3, and 4. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Rainier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF048

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Observer Program Standard Ex-Vessel Prices

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

ACTION: Notification of standard ex-vessel prices.

SUMMARY: NMFS publishes standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the North Pacific Observer Program (Observer Program). This notice is intended to provide information to vessel owners, processors, registered buyers, and other participants about the standard ex-vessel prices that will be used to calculate the observer fee for landings of groundfish and halibut made in 2017. NMFS will send invoices to processors and registered buyers subject to the fee by January 15, 2018. Fees are due to NMFS on or before February 15, 2018.

DATES: Effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: For general questions about the observer fee and standard ex-vessel prices, contact Sally Bibb at 907–586–7389. For questions about the fee billing process, contact Carl Greene at 907–586–7003. Additional information about the Observer Program is available on NMFS Alaska Region's Web site at *https://alaskafisheries.noaa.gov/fisheries/observer-program.*

SUPPLEMENTARY INFORMATION:

Background

The Observer Program deploys NMFS-certified observers (observers) who collect information necessary for the conservation and management of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish and halibut fisheries. Fishery managers use information collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected information for stock assessments and marine ecosystem research.

The Observer Program is divided into two observer coverage categories—the partial observer coverage category and the full observer coverage category. All groundfish and halibut vessels and processors are included in one of these two categories. The partial observer coverage category includes vessels and processors that are not required to have an observer at all times; the full observer coverage category includes vessels and processors required to have all of their fishing and processing operations off Alaska observed. Vessels and processors in the full coverage category arrange and pay for observer services from a permitted observer provider. Observer coverage for the partial coverage category is funded through a system of fees based on the ex-vessel value of groundfish and halibut.

Landings Subject to Observer Coverage Fee

The objective of the observer fee assessment is to levy a fee on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category. A fee is only assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit or from vessels landing individual fishing quota (IFQ) or community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against an IFQ allocation or a Federal TAC for groundfish are included in the fee assessment. A table with additional information about which landings are and are not subject to the observer fee is in NMFS regulations at § 679.55(c) and is on page 2 of an informational bulletin titled ''Observer Fee Collection'' on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/sites/default/files/observerfees.pdf.*

Fee Determination

A fee equal to 1.25 percent of the ex-vessel value is assessed on the landings of groundfish and halibut subject to the fee. Ex-vessel value is determined by multiplying the standard price for groundfish by the round weight equivalent for each species, gear, and port combination, and the standard price for halibut by the headed and gutted weight equivalent. NMFS will assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing are subject to the observer fee. All IFQ or CDQ halibut in a landing subject to the observer fee will be assessed as part of the fee. For any groundfish or halibut subject to the observer fee, NMFS will apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee associated with the landing.

Processors and registered buyers access the landing-specific, observer fee information through NMFS Web Application(*https://alaskafisheries.noaa.gov/webapps/efish/login*) or eLandings (*https://elandings.alaska.gov/*). For IFQ halibut, CDQ halibut, and IFQ sablefish, this information is available as soon as the IFQ report is submitted. For groundfish and sablefish that accrue against the fixed gear sablefish CDQ reserve, the observer fee information is generally available within 24 hours of receipt of the report. The time lag on the groundfish and sablefish CDQ fee information is necessary because NMFS must process the landings report through the catch accounting system computer programs to determine if all of the groundfish in the landings are subject to the observer fee. Information about which groundfish in a landing accrues against a Federal TAC is not immediately available from the processor's data entry into eLandings.

The intent of the North Pacific Fishery Management Council and NMFS is for vessel owners to split the fee 50/50 with the processor or registered buyer. While vessels and processors are responsible for their portion of the fee, the owner of a shoreside processor or a stationary floating processor and the registered buyer are responsible for collecting the fee, including the vessel's portion of the fee, and remitting the full fee to NMFS.

NMFS will send invoices to processors and registered buyers for their total fee, which is determined by the sum of the fees reported for each landing for that processor or registered buyer for the prior calendar year, by January 15, 2018. Processors and registered buyers must pay the fees to NMFS using NMFS Web Application by February 15, 2018. Processors and registered buyers have access to this system through a User ID and password issued by NMFS. Instructions for electronic payment will be provided on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov* and on

the observer fee invoice to be mailed to each permit holder.

Standard Prices

This notice provides the standard ex-vessel prices for groundfish and halibut species subject to the observer fee in 2017. Data sources for ex-vessel prices are—

- For groundfish other than sablefish IFQ and sablefish accruing against the fixed gear sablefish CDQ reserve, the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report (COAR) and Alaska Department of Fish and Game (ADF&G) fish tickets; and
- For halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve, the IFQ Buyer Report that is submitted annually to NMFS under § 679.5(l)(7)(i).

The standard prices in this notice were calculated using applicable guidance for protecting confidentiality of data submitted to or collected by NMFS. NMFS does not publish any price information that would permit the identification of an individual or business. At least four different vessels must make landings of a species with a particular gear type at a particular port in order for NMFS to publish that price data for that species-gear-port combination. Similarly, at least three different processors in a particular port must purchase a species harvested with a particular gear type in order for NMFS to publish a price for that species-gear-port combination. Price data that is confidential because fewer than four vessels or three processors contributed data to a particular species-gear-port combination has been aggregated to protect confidential data.

Groundfish Standard Ex-Vessel Prices

Table 1 shows the groundfish species standard ex-vessel prices for 2017. These prices are based on the CFEC gross revenue data, which are based on landings data from ADF&G fish tickets and information from the COAR. The COAR contains statewide buying and production information, and is considered the most complete routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska.

The standard ex-vessel prices for groundfish were calculated by adding ex-vessel value from the CFEC gross revenue files for 2013, 2014, and 2015 by species, port, and gear category, and adding the volume (weight) from the CFEC gross revenue files for 2013, 2014, and 2015 by species, port, and gear category, and then dividing total ex-vessel value over the 3-year period in each category by total volume over the 3-year period in each category. This calculation results in an average ex-vessel price per pound by species, port, and gear category for the 3-year period. Three gear categories were used for the standard ex-vessel prices: (1) Non-trawl gear, including hook-and-line, pot, jig, troll, and others (Non-Trawl); (2) non-pelagic trawl gear (NPT); and (3) pelagic trawl gear (PTR).

CFEC ex-vessel value and volume data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than 2 years old. For the 2017 standard ex-vessel prices, the most recent ex-vessel value and volume data available is from 2015.

If a particular groundfish species is not listed in Table 1, the standard ex-vessel price for a species group, if it exists in the management area, will be used. If price data for a particular species remained confidential once aggregated to the ALL level, data is aggregated by species group (Flathead Sole; GOA Deep-water Flatfish; GOA Shallow-water Flatfish; GOA Skate, Other; and Other Rockfish). Standard prices for the groundfish species groups are shown in Table 2.

If a port-level price does not meet the confidentiality requirements, the data are aggregated by port group. Port-group data for Southeast Alaska (SEAK) and the Eastern GOA excluding Southeast Alaska (EGOAxSE) also are presented separately when price data are available. Port-group data is then aggregated by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA) and by subarea in the BSAI (BS subarea and AI subarea). If confidentiality requirements are still not met by aggregating prices across ports at these levels, the prices are aggregated at the level of BSAI or GOA, then statewide (AK) and ports outside of Alaska (OTAK), and finally all ports, including those outside of Alaska (''ALL'').

Standard prices are presented separately for non-pelagic trawl and pelagic trawl when non-confidential data is available. NMFS also calculated prices for a ''Pelagic Trawl/Non-pelagic Trawl Combined'' (PTR/NPT) category that can be used when combining trawl price data for landings of a species in a particular port or port group will not violate confidentiality requirements. Creating this standard price category allows NMFS to assess a fee on 2017 landings of some of the species with pelagic trawl gear based on a combined trawl gear price for the port or port group.

If no standard ex-vessel price is listed for a species or species group and gear category combination in Table 1, Table 2, or Table 3, no fee will be assessed on that landing. Volume and value data for that species will be added to the standard ex-vessel prices in future years, if that data becomes available and display of a standard ex-vessel price meets confidentiality requirements.

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2017 OBSERVER COVERAGE FEE

[Based on volume and value from 2013, 2014, and 2015]

Species[1 2]	Port/area[3 4]	Non-Trawl	NPT	PTR	PTR/NPT
Alaska Plaice Flounder (133)	Kodiak	—	$0.09	—	$0.09
	CGOA	—	0.09	—	0.09
	GOA	—	0.09	—	0.09
	AK	—	0.09	—	0.09
	ALL	—	0.09	—	0.09
Arrowtooth Flounder (121)	Kodiak	—	0.06	$0.07	—
	CGOA	—	0.06	0.07	—
	GOA	—	0.06	0.07	—
	AK	—	0.06	0.07	—
	ALL	—	0.06	0.07	—
Black Rockfish (142)	AK	$0.52	0.17	—	0.17
Bocaccio Rockfish (137)	Sitka	0.51	—	—	—
	SEAK	0.41	—	—	—
	EGOA	0.41	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2017 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2013, 2014, and 2015]

Species[1 2]	Port/area[3 4]	Non-Trawl	NPT	PTR	PTR/NPT
	GOA	0.41	—	—	—
	AK	0.41	—	—	—
	ALL	0.41	—	—	—
Butter Sole (126)	Kodiak	—	0.16	0.15	—
	CGOA	—	0.16	0.15	—
	GOA	—	0.16	0.15	—
	AK	—	0.16	0.15	—
	ALL	—	0.16	0.15	—
Canary Rockfish (146)	Ketchikan	0.36	—	—	—
	Sitka	0.49	—	—	—
	SEAK	0.45	—	—	—
	EGOA	0.44	—	—	—
	Seward	0.41	—	—	—
	CGOA	0.42	—	—	—
	GOA	0.43	—	—	—
	AK	0.43	—	—	—
	ALL	0.43	—	—	—
China Rockfish (149)	Sitka	0.92	—	—	—
	SEAK	0.82	—	—	—
	Cordova	0.45	—	—	—
	EGOAxSE	0.45	—	—	—
	Homer	0.65	—	—	—
	Seward	0.61	—	—	—
	CGOA	0.62	—	—	—
	GOA	0.59	—	—	—
	AK	0.59	—	—	—
	ALL	0.59	—	—	—
Copper Rockfish (138)	Sitka	1.04	—	—	—
	SEAK	0.86	—	—	—
	EGOA	0.74	—	—	—
	Homer	0.38	—	—	—
	CGOA	0.40	—	—	—
	GOA	0.53	—	—	—
	AK	0.53	—	—	—
	ALL	0.53	—	—	—
Dover Sole (124)	Kodiak	—	0.10	0.09	—
	CGOA	—	0.10	0.09	—
	GOA	—	0.10	0.09	—
	AK	—	0.10	0.09	—
	ALL	—	0.10	0.09	—
Dusky Rockfish (172)	Sitka	0.53	—	—	—
	SEAK	0.52	—	—	—
	EGOAxSE	0.32	—	—	—
	Homer	0.52	—	—	—
	Kodiak	0.32	0.18	0.17	—
	Seward	0.54	—	—	—
	CGOA	0.33	0.18	0.17	—
	GOA	0.37	0.18	0.17	—
	AK	0.37	0.18	0.17	—
	ALL	0.37	0.18	0.17	—
English Sole (128)	Kodiak	—	0.15	0.11	—
	CGOA	—	0.15	0.11	—
	GOA	—	0.15	0.11	—
	AK	—	0.15	0.11	—
	ALL	—	0.15	0.11	—
Flathead Sole (122)	Kodiak	—	0.16	0.16	—
	CGOA	—	0.16	0.15	—
	GOA	—	0.16	0.12	—
	AK	—	0.16	0.12	—
	ALL	—	0.16	0.12	—
Northern Rockfish (136)	Kodiak	0.14	0.17	0.17	—
	CGOA	0.16	0.17	0.17	—
	GOA	0.16	0.17	0.17	—
	AK	0.23	0.17	0.17	—
	ALL	0.23	0.17	0.17	—
Octopus (870)	Homer	0.70	—	—	—
	Kodiak	0.55	0.56	0.52	—
	CGOA	0.56	0.56	0.52	—
	WGOA	0.41	—	—	—
	GOA	0.53	0.56	0.52	—
	DH/Unalaska	0.30	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2017 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2013, 2014, and 2015]

Species[1 2]	Port/area[3 4]	Non-Trawl	NPT	PTR	PTR/NPT
	BS	0.29	—	—	—
	BSAI	0.29	—	—	—
	AK	0.51	0.53	0.52	—
	ALL	0.51	0.53	0.52	—
Pacific Cod (110)	Juneau	0.59	—	—	—
	Ketchikan	0.38	—	—	—
	Petersburg	0.14	—	—	—
	Sitka	0.57	—	—	—
	SEAK	0.57	—	—	—
	Cordova	0.32	—	—	—
	EGOAxSE	0.34	—	—	—
	Homer	0.34	—	—	—
	Kenai	0.29	—	—	—
	Kodiak	0.32	0.27	0.27	—
	Seward	0.33	—	—	—
	CGOA	0.32	0.27	0.27	—
	WGOA	0.27	0.25	—	0.24
	GOA	—	0.26	0.21	—
	Adak	0.29	—	—	—
	AI	0.29	—	—	—
	DH/Unalaska	0.29	0.26	—	0.26
	BS	0.28	0.26	—	0.26
	BSAI	—	0.26	—	0.26
	AK	0.29	0.26	0.20	—
	ALL	0.29	0.26	0.20	—
Pacific Ocean Perch (141)	Kodiak	—	0.19	0.20	—
	CGOA	—	0.19	0.20	—
	GOA	0.27	0.19	0.19	—
	AK	0.35	0.19	0.19	—
	ALL	0.35	0.19	0.19	—
Pollock (270)	Homer	0.33	—	—	—
	Kodiak	0.12	0.15	0.14	—
	Seward	0.06	—	—	—
	CGOA	0.12	0.15	0.14	—
	WGOA	—	0.13	—	0.12
	GOA	0.12	0.15	0.14	—
	DH/Unalaska	0.13	0.16	—	0.16
	BS	0.08	0.15	—	0.14
	BSAI	0.08	0.15	—	0.14
	AK	0.12	0.15	0.14	—
	ALL	0.12	0.15	0.14	—
Quillback Rockfish (147)	Ketchikan	0.47	—	—	—
	Petersburg	0.25	—	—	—
	Sitka	0.87	—	—	—
	SEAK	0.81	—	—	—
	Cordova	0.31	—	—	—
	EGOAxSE	0.34	—	—	—
	Homer	0.45	—	—	—
	Seward	0.39	—	—	—
	CGOA	0.39	—	—	—
	GOA	0.54	—	—	—
	AK	0.54	—	—	—
	ALL	0.54	—	—	—
Redbanded Rockfish (153)	Juneau	0.30	—	—	—
	Ketchikan	0.32	—	—	—
	Sitka	0.51	—	—	—
	SEAK	0.37	—	—	—
	EGOAxSE	0.34	—	—	—
	Homer	0.35	—	—	—
	Kodiak	0.20	0.18	—	0.18
	Seward	0.40	—	—	—
	CGOA	0.34	0.18	—	0.18
	GOA	0.36	0.18	—	0.18
	AK	0.36	0.18	—	0.18
	ALL	0.36	0.18	—	0.18
Redstripe Rockfish (158)	SEAK	0.49	—	—	—
	EGOA	0.49	—	—	—
	Seward	0.63	—	—	—
	CGOA	0.48	—	—	—
	GOA	0.48	—	—	—
	AK	0.48	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2017 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2013, 2014, and 2015]

Species[1 2]	Port/area[3 4]	Non-Trawl	NPT	PTR	PTR/NPT
	ALL	0.48	—	—	—
Rex Sole (125)	Kodiak	—	0.31	0.32	—
	CGOA	—	0.31	0.32	—
	GOA	—	0.31	0.32	—
	AK	—	0.31	0.32	—
	ALL	—	0.31	0.32	—
Rock Sole (123)	Kodiak	—	0.25	0.25	—
	CGOA	—	0.25	0.25	—
	GOA	0.21	0.25	0.25	—
	AK	0.21	0.25	0.25	—
	ALL	0.21	0.25	0.25	—
Rosethorn Rockfish (150)	SEAK	0.52	—	—	—
	EGOA	0.52	—	—	—
	Seward	0.42	—	—	—
	CGOA	0.42	—	—	—
	GOA	0.45	—	—	—
	AK	0.45	—	—	—
	ALL	0.45	—	—	—
Rougheye Rockfish (151)	Petersburg	0.26	—	—	—
	Sitka	0.51	—	—	—
	SEAK	0.41	—	—	—
	Cordova	0.29	—	—	—
	EGOAxSE	0.30	—	—	—
	Homer	0.35	—	—	—
	Kodiak	0.30	0.23	0.22	—
	Seward	0.40	—	—	—
	CGOA	0.35	0.23	0.22	—
	GOA	0.36	0.24	0.22	—
	BS	0.45	—	—	—
	BSAI	0.43	—	—	—
	AK	0.36	0.24	0.22	—
	ALL	0.36	0.24	0.22	—
Sablefish (blackcod) (710)	Kodiak	[5] n/a	2.64	2.67	—
	CGOA	[5] n/a	2.64	2.66	—
	GOA	[5] n/a	2.65	2.66	—
	AK	[5] n/a	2.65	2.66	—
	ALL	[5] n/a	2.65	2.66	—
Shortraker Rockfish (152)	Juneau	0.32	—	—	—
	Ketchikan	0.31	—	—	—
	Petersburg	0.27	—	—	—
	Sitka	0.51	—	—	—
	SEAK	0.39	—	—	—
	EGOAxSE	0.46	—	—	—
	Homer	0.37	—	—	—
	Kodiak	0.30	0.19	0.22	—
	Seward	0.40	—	—	—
	CGOA	0.39	0.19	0.22	—
	GOA	0.40	0.24	0.22	—
	BS	0.44	—	—	—
	BSAI	0.42	—	—	—
	AK	0.40	0.24	0.22	—
	ALL	0.40	0.24	0.22	—
Silvergray Rockfish (157)	Juneau	0.33	—	—	—
	Ketchikan	0.37	—	—	—
	Sitka	0.54	—	—	—
	SEAK	0.44	—	—	—
	EGOAxSE	0.34	—	—	—
	Homer	0.65	—	—	—
	Seward	0.43	—	—	—
	CGOA	0.46	—	—	—
	GOA	0.44	—	—	—
	AK	0.44	—	—	—
	ALL	0.44	—	—	—
Skate, Alaska (703)	GOA	0.41	—	—	—
	AK	0.41	—	—	—
	ALL	0.41	—	—	—
Skate, Big (702)	EGOAxSE	0.41	—	—	—
	EGOA	0.41	—	—	—
	Kodiak	0.45	0.45	0.45	—
	Seward	0.40	—	—	—
	CGOA	0.44	0.45	0.45	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2017 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2013, 2014, and 2015]

Species[1 2]	Port/area[3 4]	Non-Trawl	NPT	PTR	PTR/NPT
	GOA	0.44	0.45	0.45	—
	AK	0.44	0.45	0.45	—
	ALL	0.44	0.45	0.45	—
Skate, Longnose (701)	Petersburg	0.40	—	—	—
	SEAK	0.40	—	—	—
	EGOAxSE	0.40	—	—	—
	Homer	0.36	—	—	—
	Kodiak	0.45	0.45	0.45	—
	Seward	0.40	—	—	—
	CGOA	0.43	0.45	0.45	—
	GOA	0.43	0.45	0.45	—
	AK	0.43	0.45	0.45	—
	ALL	0.43	0.45	0.45	—
Skate, Other (700)	GOA	0.32	—	—	—
	AK	0.35	—	—	—
	ALL	0.35	—	—	—
Squid (875)	Kodiak	—	—	0.06	0.06
	CGOA	—	—	0.08	0.08
	GOA	—	—	0.08	0.08
	AK	—	0.03	0.07	—
	ALL	—	0.03	0.07	—
Starry Flounder (129)	Kodiak	—	0.09	—	0.09
	CGOA	—	0.09	—	0.09
	GOA	—	0.09	—	0.09
	AK	—	0.09	—	0.09
	ALL	—	0.09	—	0.09
Thornyhead Rockfish (Idiots) (143)	Juneau	1.01	—	—	—
	Ketchikan	1.15	—	—	—
	Petersburg	0.97	—	—	—
	SEAK	1.07	—	—	—
	EGOAxSE	0.74	—	—	—
	Homer	0.78	—	—	—
	Kodiak	0.65	0.67	—	0.70
	Seward	0.82	—	—	—
	CGOA	0.76	0.67	—	0.70
	WGOA	0.73	—	—	—
	GOA	—	0.68	—	0.71
	DH/Unalaska	0.75	—	—	—
	BS	0.72	—	—	—
	BSAI	0.69	—	—	—
	AK	0.84	0.68	—	0.71
	ALL	0.84	0.68	—	0.71
Tiger Rockfish (148)	SEAK	0.47	—	—	—
	EGOAxSE	0.32	—	—	—
	Homer	0.42	—	—	—
	Seward	0.40	—	—	—
	CGOA	0.40	—	—	—
	GOA	0.42	—	—	—
	AK	0.42	—	—	—
	ALL	0.42	—	—	—
Widow Rockfish (156)	Sitka	0.46	—	—	—
	SEAK	0.46	—	—	—
	EGOA	0.46	—	—	—
	GOA	0.47	—	—	—
	AK	0.47	—	—	—
	ALL	0.47	—	—	—
Yelloweye Rockfish (145)	Craig	1.33	—	—	—
	Ketchikan	1.40	—	—	—
	Petersburg	1.11	—	—	—
	Sitka	1.76	—	—	—
	SEAK	1.58	—	—	—
	Cordova	1.01	—	—	—
	Whittier	0.85	—	—	—
	EGOAxSE	0.94	—	—	—
	Homer	0.80	—	—	—
	Kodiak	0.40	0.25	—	0.25
	Seward	0.58	—	—	—
	CGOA	0.60	0.25	—	0.25
	WGOA	0.45	—	—	—
	GOA	—	0.25	—	0.25
	BS	0.31	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2017 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2013, 2014, and 2015]

Species[1 2]	Port/area[3 4]	Non-Trawl	NPT	PTR	PTR/NPT
	BSAI	0.31	—	—	—
	AK	1.34	0.25	—	0.25
	ALL	1.34	0.25	—	0.25
Yellowtail Rockfish (155)	Sitka	0.48	—	—	—
	SEAK	0.48	—	—	—
	EGOA	0.48	—	—	—
	Homer	0.54	—	—	—
	Seward	0.87	—	—	—
	CGOA	0.40	—	—	—
	GOA	0.42	—	—	—
	AK	0.42	—	—	—
	ALL	0.42	—	—	—

— = no landings in last 3 years or the data is confidential.

[1] If species is not listed, use price for the species group in Table 2 if it exists in the management area. If no price is available for the species or species group in Table 1, Table 2, or Table 3, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] For species codes, see Table 2a to 50 CFR part 679.

[3] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all parts including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[4] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type, or see Table 2 or Table 3.

[5] n/a = ex-vessel prices for sablefish landed with hook-and-line, pot, or jig gear are listed in Table 3 with the prices for IFQ and CDQ landings.

TABLE 2—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES GROUPS FOR 2017 OBSERVER COVERAGE FEE

[Based on volume and value from 2013, 2014, and 2015]

Species group[1]	Port/area[2 3]	Non-trawl	NPT	PTR
Flathead Sole (FSOL)	Kodiak	—	$0.16	$0.16
	CGOA	—	0.16	0.15
	GOA	—	0.16	0.12
	AK	—	0.16	0.12
GOA Deep-water Flatfish[4] (DFL4)	Kodiak	—	0.10	0.09
	CGOA	—	0.10	0.09
	GOA	—	0.10	0.09
GOA Shallow-water Flatfish[5] (SFL1)	Kodiak	—	0.23	0.23
	CGOA	—	0.23	0.23
	GOA	$0.23	0.23	0.23
GOA Skate, Other (USKT)	EGOA	0.40	—	—
	CGOA	0.39	—	—
	GOA	0.39	—	—
Other Rockfish[6 7] (ROCK)	Juneau	0.42	—	—
	Ketchikan	0.33	—	—
	Petersburg	0.36	—	—
	Sitka	0.55	—	—
	SEAK	0.46	—	—
	Cordova	0.83	—	—
	Whittier	0.72	—	—
	EGOAxSE	0.78	—	—
	Homer	0.76	—	—
	Kodiak	0.38	0.20	0.20
	Seward	0.50	—	—
	CGOA	0.53	0.20	0.20
	WGOA	0.60	—	—
	GOA	—	0.20	0.20
	DH/Unalaska	0.75	—	—
	BS	0.72	—	—
	BSAI	0.68	—	—
	AK	—	0.20	0.20

— = no landings in last 3 years or the data is confidential.

[1] If groundfish species is not listed in Table 1, use price for the species group if it exists in the management area. If no price is available for the species or species group in Table 1, Table 2, or Table 3, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] Regulatory areas are defined at § 679.2. (AK = Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[3] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[4] "Deep-water flatfish" in the GOA means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[5] "Shallow-water flatfish" in the GOA means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] In the GOA:
''Other rockfish (slope rockfish)'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergray), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
''Other rockfish'' in the Western and Central Regulatory Areas means other rockfish (slope rockfish) and demersal shelf rockfish.
''Other rockfish'' in the West Yakutat District of the EGOA means other rockfish (slope rockfish), northern rockfish (*S. polyspinis*), and demersal shelf rockfish.
''Other rockfish'' in the SEO District of the GOA (and SEAK for Table 2) means other rockfish (slope rockfish) and northern rockfish (*S. polyspinis*).
[7] ''Other rockfish'' in the BSAI includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

TABLE 3—STANDARD EX-VESSEL PRICES FOR HALIBUT IFQ, HALIBUT CDQ, SABLEFISH IFQ, AND SABLEFISH ACCRUING AGAINST THE FIXED GEAR SABLEFISH CDQ RESERVE FOR THE 2017 OBSERVER FEE

[Based on 2016 IFQ Buyer Report]

Species	Port/area [1]	Price [2]
Halibut (200)	Juneau	$6.75
	Ketchikan	6.80
	Petersburg	6.71
	Sitka	6.51
	SEAK	6.69
	Cordova	6.87
	EGOAxSE	6.75
	Homer	7.19
	Kodiak	6.63
	Seward	6.96
	CGOA	6.90
	WGOA	6.18
	BS	6.02
	BSAI	5.96
	AK	6.65
	ALL	6.65
Sablefish (710)	Ketchikan	4.48
	SEAK	4.42
	EGOAxSE	3.90
	Homer	4.25
	Kodiak	4.15
	Seward	4.14
	CGOA	4.15
	WGOA	4.10
	BS	5.11
	BSAI	5.10
	AK	4.25
	ALL	4.25

[1] Regulatory areas are defined at § 679.2. (AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)
[2] If a price is listed for the species and port combination, that price will be applied to the round weight equivalent for sablefish landings and the headed and gutted weight equivalent for halibut landings. If no price is listed for the port, use port group.

Halibut and Sablefish IFQ and CDQ Standard Ex-vessel Prices

Table 3 shows the observer fee standard ex-vessel prices for halibut and sablefish. These standard prices are calculated as a single annual average price, by species and port or port group. Volume and ex-vessel value data collected on the 2016 IFQ Buyer Report for landings made from October 1, 2015, through September 30, 2016, were used to calculate the standard ex-vessel prices for the 2017 observer fee for halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish landings that accrue against the fixed gear sablefish CDQ reserve.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF EDUCATION

Applications for New Awards; Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information: Magnet Schools Assistance Program (MSAP) Notice inviting applications for new awards for fiscal year (FY) 2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.165A.

DATES:

Applications Available: December 13, 2016.

Deadline for Notice of Intent To Apply: January 9, 2017.

Deadline for Transmittal of Applications: April 11, 2017.

Date of Informational Webinar: The Department of Education (Department) intends to hold a Webinar to provide technical assistance to interested applicants. Detailed information

regarding this Webinar will be provided on the MSAP Web site at *http://innovation.ed.gov/what-we-do/parental-options/magnet-school-assistance-program-msap/*. A recording of this Webinar will be available on the Web site following the session.

Deadline for Intergovernmental Review: May 8, 2017.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSAP, authorized under Title IV, Part D of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), provides grants to local educational agencies (LEAs) and consortia of LEAs to support magnet schools under an approved, required or voluntary, desegregation plan.

The ESSA amended the MSAP in several important ways. To better support the development and implementation of magnet schools that increase racial integration and promote academic opportunity and excellence, the ESSA amended the MSAP to prioritize the creation and replication of evidence-based magnet programs and magnet schools that seek to reduce, eliminate, or prevent minority group isolation by taking into account socioeconomic diversity. To assist LEAs with improving access to magnet schools, under the program as reauthorized by the ESSA, MSAP funds may now be used to support student transportation, provided the transportation costs are sustainable and the costs do not constitute a significant portion of grant funds. Additionally, the reauthorized MSAP extends the grant term from three years to up to five years, and increases the maximum cumulative grant award from $12 million to $15 million to each grantee over the course of its project. Grantees must use grant funds for activities intended to improve students' academic achievement, including acquiring books, materials, technology, and equipment to support a rigorous, theme-based academic program; conducting planning and promotional activities; providing professional development opportunities for teachers to implement the academic program; and paying the salaries of effective teachers and other instructional personnel.

Background: The MSAP seeks to reduce minority group isolation by funding projects in LEAs or consortia of LEAs that propose to implement magnet schools with academically challenging, innovative instructional approaches or specialized curricula ''designed to bring students from different social, economic, ethnic, and racial backgrounds together.'' [1] Unique to many of these schools is the implementation of high-demand, industry-specific themes, using sophisticated technology and curricula.

Recent MSAP grantees have experienced both successes and challenges. Some grantees have effectively diversified their schools, while other grantees have struggled to meet their desegregation goals. Similar to the disparity in grantees' results related to desegregation efforts, significant variations in grantees' ability to increase academic achievement have emerged.[2] As such, this year's competition continues to emphasize programs that show promise of promoting academic achievement and desegregation (primarily through the use of selection criteria focused on these issues).

In addition, as part of the program's focus on improving academic achievement and reducing minority group isolation, we include the program's new statutory priority to give a preference to applicants that propose to increase racial integration by taking into account socioeconomic diversity in designing and implementing magnet programs. The socioeconomic make-up of the school is one of the strongest predictors of whether or not a student will succeed academically. Moreover, the social benefits of attending an integrated school also contribute to improved academic and life outcomes for students.[3] As of 2011, almost half of public elementary school students attend schools where most of the students are from lower-income households, and black and Latino students are disproportionately concentrated in these schools in almost every State.[4] In this year's MSAP competition, we encourage applicants to propose a range of activities that incorporate a focus on socioeconomic diversity, including establishing and participating in a voluntary, inter-district transfer program for students from varied neighborhoods; making strategic decisions regarding magnet school sites to maximize the potential diversity (socioeconomically and otherwise) of the school given the schools' neighboring communities; revising school boundaries, attendance zones, or feeder patterns to take into account residential segregation or other related issues; and the formally merging of or coordinating among multiple educational jurisdictions in order to pool resources, provide transportation, and expand high-quality public school options for lower-income students. Applicants that choose to address this priority should identify the criteria they intend to use to determine students' socioeconomic status (*e.g.,* based on family income, education level, other factors, or a combination thereof) and clearly describe and support how their approach to incorporating socioeconomic diversity is part of their overall effort to eliminate, reduce, or prevent minority group isolation.

Designing schools that attract and retain a diverse group of students necessitates engagement with their parents, families, and community. For this reason, we encourage applicants to demonstrate ongoing, robust family and community engagement (primarily through the use of a selection criterion focused on this issue). As applicable, each applicant's process for public involvement and consultation should reflect coordination with other relevant government entities, including housing and transportation authorities, given the impact that other public policies, such as housing and transportation, have on the composition of a school's student body. To encourage systemic and timely change, the Department is also interested in proposals that establish new school assignment or admissions policies for schools that seek to increase the number of low-income students they serve through student assignment policies that consider the socioeconomic status of students' households, students residing in neighborhoods experiencing concentrated poverty, and students from low-performing schools (amongst other factors). The Department is further interested in proposals that establish magnet schools at multiple locations within an LEA or consortia of LEAs that vary in terms of the demographics of the surrounding neighborhoods to increase opportunities for all students to attend high-quality magnet schools without placing the majority of the transportation burden on students of color. Such proposals should be addressed in response to Competitive Preference Priority 4.

With this year's competition, the Department also aims to improve

[1] 20 U.S.C. 7231(b)(2).

[2] Walton, M., Silva, B., and Ford, E. (2016). *Magnet Schools Assistance Program FY 2013 Cohort Characteristics and Government Performance and Results Act Data Report for Performance Year 2.* U.S. Department of Education, Washington, DC.

[3] Coleman, James. ''Equality and Educational Opportunity.'' *Does Segregation Still Matter,* Russell Rumberger and Gregory Palardy, 2005, 1999–2045.

[4] Susan Aud et al., *The Condition of Education 2011* (Washington, DC: U.S. Government Printing Office, 2011), Table A–28–1.

MSAP's short- and longer-term outcomes and generate evidence to inform future efforts by encouraging applicants to (1) propose projects that are supported by prior evidence and (2) propose robust evaluations of their proposed MSAP projects that would yield evidence of promise (as defined in this notice) from which future MSAP applicants could learn. Along these lines, we include a selection criterion that encourages applicants to submit a logic model as part of their applications. Each proposed project should be supported by a logic model with clearly defined outcomes that will inform the project's performance measures and evaluation. In addition, through Competitive Preference Priority 2 we encourage applicants to submit research that demonstrates that the applicant's proposed approach to their MSAP-funded magnet schools is based on prior evidence and we encourage applicants to submit evidence that corresponds to the highest levels of evidence available.

Under the ESSA amendments to the ESEA, MSAP grantees will now have more funding, time, and resources to implement meaningful, proven methods for developing magnet programs to diversify schools and improve academic outcomes for students. We encourage LEAs to use the MSAP funds as a catalyst to create comprehensive and systematic approaches to racial and socioeconomic integration, including effective desegregation programs that will be continued after the end of the grant.

Priorities: This competition includes four competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priorities 1 and 3 are from the MSAP regulations at 34 CFR 280.32. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priorities 2 and 4 are from section 4406 of the ESEA, as amended by the ESSA, 20 U.S.C. 7231e.

Competitive Preference Priorities: For FY 2017, these priorities are competitive preference priorities. Under 34 CFR 280.30(f), we will award up to six additional points to an application, depending on how well the applicant addresses Competitive Preference Priorities 1, 2, and 3. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional four points to an application, depending on how well the application addresses Competitive Preference Priority 4. Together, depending on how well the application meets these priorities, an application may be awarded up to a total of 10 additional points. Applicants may apply under any, all, or none of the competitive preference priorities. The maximum possible points for each competitive preference priority are indicated in parentheses following the name of the priority. These points are in addition to any points the application earns under the selection criteria in this notice.

These priorities are:

Competitive Preference Priority 1—Need for Assistance (0 or 2 Additional Points)

The Secretary evaluates the applicant's need for assistance by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet schools project—*e.g.,* the type of program proposed, the location of the magnet school within the LEA—impacts the applicant's ability to successfully carry out the approved plan.

Competitive Preference Priority 2—New or Revised Magnet Schools Projects and Strength of Evidence To Support Proposed Projects (0 to 3 Additional Points)

The Secretary determines the extent to which the applicant proposes to carry out a new evidence-based (as defined in this notice) magnet school program or significantly revise an existing magnet school program using evidence-based methods and practices, as available, or replicate an existing magnet school program that has a demonstrated record of success in increasing student academic achievement and reducing isolation of minority groups.

Competitive Preference Priority 3—Selection of Students (0 to 2 Additional Points)

The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

Competitive Preference Priority 4—Increasing Racial Integration and Socioeconomic Diversity (0 to 4 Additional Points)

The Secretary determines the extent to which the applicant proposes to increase racial integration by taking into account socioeconomic diversity in designing and implementing magnet school programs.

Definitions: The definition of ''evidence-based'' is from 20 U.S.C. 7801. The remaining definitions are from 34 CFR 77.1(c).

Evidence-based means an activity, strategy, or intervention that—

(i) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(A) Strong evidence from at least one well-designed and well-implemented experimental study;

(B) Moderate evidence from at least one well designed and well-implemented quasi-experimental study; or

(C) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)

(A) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(B) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in paragraphs (i) and (ii) of this section are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice

(*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: 20 U.S.C. 7231–7231j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 97, 98, and 99. (b) The OMB 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 as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 280.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $90,582,483.

The Administration has requested $115,000,000 for this program for FY 2017, of which we estimate $90,582,483 will be for new awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications at this time to allow enough time for applicants to develop strong applications and for the Department to complete the grant process before the end of the 2017 fiscal year, if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2018 from the list of unfunded applications from this competition.

Estimated Range of Awards: $700,000-$3,000,000 per budget year.

Maximum Award: No grant awarded under this competition to a LEA, or a consortium of LEAs, shall be for more than $15,000,000 for the project period. Grantees may not expend more than 50 percent of the year one grant funds and not more than 15 percent of year two and three grant funds for planning activities. Professional development is not considered to be a planning activity.

Note: Yearly award amounts may vary.

Estimated Number of Awards: 23–30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs implementing a desegregation plan as specified in section III. 3 of this notice.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Application Requirement:* Under section 4405(b)(1)(A) of the ESEA, as amended by the ESSA, applicants must describe how a grant awarded under this competition will be used to promote desegregation. Applicants must include any available evidence on how the proposed magnet school programs will increase interaction among students of different social, economic, ethnic, and racial backgrounds. If such evidence is not available, applicants must include a rationale, based on current research, for how the proposed magnet school programs will increase interaction among students of different social, economic, ethnic, and racial backgrounds. Applicants should address this application requirement in the project narrative and, as appropriate, the logic model.

4. *Other:* Applicants must submit with their applications one of the following types of desegregation plans to establish eligibility to receive MSAP assistance: (a) A desegregation plan required by a court order; (b) a desegregation plan required by a State agency or an official of competent jurisdiction; (c) a desegregation plan required by the Department's Office for Civil Rights (OCR) under Title VI of the Civil Rights Act of 1964 (Title VI); or (d) a voluntary desegregation plan adopted by the applicant and submitted to the Department for approval as part of the application. Under the MSAP regulations, applicants are required to provide all of the information required in 34 CFR 280.20(a) through (g) in order to satisfy the civil rights eligibility requirements found in 34 CFR 280.2(a)(2) and (b).

In addition to the particular data and other items for required and voluntary desegregation plans described in the application package, an application must include—

- Projected enrollment by race and ethnicity for magnet and feeder schools;
- Signed civil rights assurances (included in the application package); and
- An assurance that the desegregation plan is being implemented or will be implemented if the application is funded.

Required Desegregation Plans

1. Desegregation plans required by a court order. An applicant that submits a desegregation plan required by a court order must submit complete and signed copies of all court documents demonstrating that the magnet schools are a part of the approved desegregation plan. Examples of the types of documents that would meet this requirement include a Federal or State court order that establishes specific magnet schools, amends a previous order or orders by establishing additional or different specific magnet schools, requires or approves the establishment of one or more unspecified magnet schools, or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Desegregation plans required by a State agency or official of competent jurisdiction. An applicant submitting a desegregation plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the

desegregation plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its desegregation plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Desegregation plans required by Title VI. An applicant that submits a desegregation plan required by OCR under Title VI must submit a complete copy of the desegregation plan demonstrating that magnet schools are part of the approved plan or that the plan authorizes the inclusion of magnet schools at the discretion of the applicant.

4. Modifications to required desegregation plans. A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the desegregation plan must be approved by the court, agency, or official that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI desegregation plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR regional office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved desegregation plan. However, all applicants must submit proof of approval of all modifications to their plans to the Department by May 19, 2017. Proof of plan modifications should be mailed to the person and address identified under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Voluntary Desegregation Plans

A voluntary desegregation plan must be approved by the Department each time an application is submitted for funding. Even if the Department has approved a voluntary desegregation plan in an LEA in the past, to be reviewed, the desegregation plan must be resubmitted with the application, by the application deadline.

An applicant's voluntary desegregation plan must describe how the LEA defines or identifies minority group isolation, demonstrate how the LEA will reduce, eliminate, or prevent minority group isolation for each magnet school in the proposed magnet school application, and, if relevant, at identified feeder schools, and demonstrate that the proposed voluntary desegregation plan is adequate under Title VI. For additional guidance on how an LEA can voluntarily reduce minority group isolation and promote diversity in an LEA in light of the Supreme Court's decision in *Parents Involved in Community Schools* v. *Seattle School District No 1 et al.,* 551 U.S. 701 (2007), see the December 2, 2011, ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' available on the Department's Web site at *www.ed.gov/ocr/docs/guidance-ese-201111.pdf.*

Complete and accurate enrollment forms and other information as required by the regulations in 34 CFR 280.20(f) and (g) for applicants with voluntary desegregation plans are critical to the Department's determination of an applicant's eligibility under a voluntary desegregation plan (specific requirements are detailed in the application package).

Voluntary desegregation plan applicants must submit documentation of school board approval or documentation of other official adoption of the plan as required by the regulations in 34 CFR 280.20(f)(2) when submitting their application. LEAs that were previously under a required desegregation plan, but that have achieved unitary status and so are voluntary desegregation plan applicants, typically would not need to include court orders. Rather such applications should provide the documentation discussed in this section.

4. *Single-Sex Programs:* In addition to the normal MSAP grant review process, an applicant proposing to operate a single-sex magnet school or a coeducational magnet school that offers single-sex classes or extracurricular activities will undergo a separate and detailed review of its proposed single-sex educational program to determine compliance with applicable nondiscrimination laws, including the Equal Protection Clause of the U.S. Constitution (as interpreted in *United States* v. *Virginia,* 518 U.S. 515 (1996), and other cases) and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its regulations, including 34 CFR 106.34. This additional review is likely to require the applicant to provide additional fact-specific information about the single-sex program within the Department's timeframes for determining eligibility for funding. It is likely special conditions will be placed on any grant used to support a single-sex educational program. Please see the application package for additional information about an application proposing a single-sex magnet school or a coeducational magnet school offering single-sex classes or extracurricular activities.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EdPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.165A.

To obtain a copy from the program office, contact: Jennifer Todd, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W201, Washington, DC 20202–5970. Telephone: (202) 453–7200 or by email: *msap.team@ed.gov.*

If you use a TDD or 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 program contact person listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of the applicant's intent to submit an application for funding by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address, (2) the number of and proposed theme(s) of school(s) that will be served through the MSAP grant, and (3) information on the priority or

priorities (if any) under which the applicant intends to apply. Applicants may access this form online at *http://innovation.ed.gov/what-we-do/parental-options/magnet-school-assistance-program-msap/.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive preference priorities that reviewers use to evaluate your application. The suggested page limit for the application narrative is no more than 150 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

• Include page numbers at the bottom of each page in your narrative.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances, certifications, the desegregation plan and related information, and the tables used to respond to Competitive Preference Priorities 2 and 3; or the one-page abstract, the resumes, or letters of support. However, the page limit does apply to all of the application narrative in Part III.

2. b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the MSAP program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 13, 2016.

Date of Informational Webinar: The MSAP intends to hold a Webinar to provide technical assistance to interested applicants. Detailed information regarding this Webinar will be provided on the MSAP Web site at: *http://innovation.ed.gov/what-we-do/parental-options/magnet-school-assistance-program-msap/.*

A recording of this Webinar will be available on the Web site following the session.

Deadline for Transmittal of Applications: April 11, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (Grants.gov). 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 *Other Submission Requirements* in section IV of this notice.

We do not consider an 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: May 8, 2017.

4. *Intergovernmental Review:* This program 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 program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 280.41. The ESEA, as amended by the ESSA, removed the statutory prohibition on the use of funds for transportation; therefore, the prohibition on transportation in the regulation is no longer applicable. 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), 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 at the following Web site: *http://fedgov.dnb.com/webform.* 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 two to five 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 you enter into the SAM database. 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.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

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://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under MSAP 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 MSAP, CFDA number 84.165A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

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.*

You may access the electronic grant application for MSAP at *www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.165, not 84.165A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for MSAP to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- 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 Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk,

toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* 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 *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system;

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: Jennifer Todd, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W250, Washington, DC 20202–5970. FAX: (202) 205–5630.

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, Application Control Center, Attention: (CFDA Number 84.165A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

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.

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.

We will not consider applications postmarked after the application deadline date.

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, Application Control Center, Attention: (CFDA Number 84.165A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria are from 34 CFR 75.210, 34 CFR 280.30, 34 CFR 280.31, and sections 4401 and 4405 of the ESEA, as amended by the ESSA. All of the selection criteria are listed in this section and in the application package.

The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score that an application may receive under the competitive preference priorities and the selection criteria is 110 points.

(a) *Desegregation (30 points).*

The Secretary reviews each application to determine the quality of the desegregation-related activities and determines the extent to which the applicant demonstrates—

(1) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools. (34 CFR 280.31(a)(2)(v))

(2) How it will foster interaction among students of different social, economic, ethnic, and racial backgrounds in classroom activities,

extracurricular activities, or other activities in the magnet schools (or, if appropriate, in the schools in which the magnet school programs operate). (34 CFR 280.31)

(3) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, *e.g.,* women and girls in mathematics, science, or technology courses, and disabled students. (34 CFR 280.31)

(4) The effectiveness of all other desegregation strategies proposed by the applicant for the elimination, reduction, or prevention of minority group isolation in elementary schools and secondary schools with substantial proportions of minority students. (Section 4401(b)(1) of the ESEA, as amended by the ESSA)

(b) *Quality of Project Design (30 points).*

The Secretary reviews each application to determine the quality of the project design. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The manner and extent to which the magnet school program will improve student academic achievement for all students attending the magnet school programs, including the manner and extent to which each magnet school program will increase student academic achievement in the instructional area or areas offered by the school, including any evidence, or if such evidence is not available, a rationale based on current research findings, to support such description. (Sections 4405(b)(1)(E)(i) and 4405(b)(1)(B) of the ESEA, as amended by the ESSA)

(2) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* State educational agencies, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence. (34 CFR 75.210)

(3) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (34 CFR 75.210)

(4) The extent to which the proposed project is supported by strong theory (as defined in this notice). (34 CFR 75.210)

(c) *Quality of Management Plan (15 points) (34 CFR 75.210).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(d) *Quality of Personnel (5 points) (34 CFR 280.31).*

(1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project. The Secretary determines the extent to which—

(a) The project director (if one is used) is qualified to manage the project;

(b) Other key personnel are qualified to manage the project; and

(c) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools.

(2) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(e) *Quality of Project Evaluation (20 points) (34 CFR 75.210).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well-implemented, produce evidence of promise (as defined in this notice).

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

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).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. 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, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds

$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

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); or we may send you an email containing a link to access an electronic version of your 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 multiyear 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.*

(c) The Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* We have established the following five performance measures for the MSAP:

(a) The number and percentage of magnet schools receiving assistance whose student enrollment reduces, eliminates, or prevents minority group isolation.

(b) The percentage increase of students from major racial and ethnic groups in magnet schools receiving assistance who score proficient or above on State assessments in reading/language arts as compared to previous year's data.

(c) The percentage increase of students from major racial and ethnic groups in magnet schools receiving assistance who score proficient or above on State assessments in mathematics as compared to previous year's data.

(d) The percentage of magnet schools that received assistance that are still operating magnet school programs three years after Federal funding ends.

(e) The percentage of magnet schools that received assistance that meet the State's annual measurable objectives and, for high schools, graduation rate targets at least three years after Federal funding ends.

Note: Recognizing that States are no longer required to report annual measurable objectives to the Department under the ESEA, as amended by the ESSA, we include this performance measure in order to ensure MSAP grantees monitor and report high school graduation rates. States must establish and measure against ambitious, long-term goals; we encourage MSAP grantees to consider these State goals and incorporate them into their annual performance reporting as appropriate.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Jennifer Todd, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W201, Washington, DC 20202–5970. Telephone: (202) 453–7200 or by email: *msap.team@ed.gov.*

If you use a TDD or TTY, call the FRS, 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 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: December 8, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–29907 Filed 12–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces tests, test forms, and delivery formats that the Secretary determines to be suitable for use in the National Reporting System for Adult Education (NRS). The Secretary also clarifies that, to provide for the transition from the performance accountability system for the Adult Education and Family Literacy Act (AEFLA) program under the Workforce Investment Act of 1998 (WIA) to the performance accountability system for AEFLA as reauthorized by the Workforce Innovation and

Opportunity Act (WIOA), this announcement will remain effective until June 30, 2019.

FOR FURTHER INFORMATION CONTACT: Jay LeMaster, Department of Education, 400 Maryland Avenue SW., Room 11–152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–6218 or by email: *John.LeMaster@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.

SUPPLEMENTARY INFORMATION: On January 14, 2008, we published in the **Federal Register** final regulations for 34 CFR part 462, Measuring Educational Gain in the National Reporting System for Adult Education (NRS regulations) (73 FR 2306). The NRS regulations established the process the Secretary uses to determine the suitability of tests for use in the NRS by States and local eligible providers. We annually publish in the **Federal Register** and post on the Internet at *www.nrsweb.org* a list of the names of tests and the educational functioning levels the tests are suitable to measure in the NRS as required by § 462.12(c)(2).

On April 16, 2008, we published in the **Federal Register** a notice inviting test publishers to submit tests for review (73 FR 20616).

On February 2, 2010, we published in the **Federal Register** a notice (February 2010 notice) listing the tests and test forms the Secretary determined to be suitable for use in the NRS (75 FR 5303).

The Secretary determined tests and test forms to be suitable for a period of either seven or three years from the date of the February 2010 notice. A seven-year approval required no additional action on the part of the publisher, unless the information the publisher submitted as a basis for the Secretary's review was inaccurate or unless the test is substantially revised. A three-year approval was issued with a set of conditions to be met by the completion of the three-year period. If these conditions were met, the Secretary would approve a period of time for which the test may continue to be used in the NRS.

On September 12, 2011, we published in the **Federal Register** (76 FR 56188) an annual notice of tests determined suitable for use in the NRS (September 2011 notice). The September 2011 notice updated the list published in the February 2010 notice and included suitable test delivery formats. The September 2011 notice clarified that some, but not all, tests using computer-adaptive or computer-based delivery formats are suitable for use in the NRS.

On August 6, 2012, we published in the **Federal Register** (77 FR 46749) an annual notice of tests determined suitable for use in the NRS (August 2012 notice) that included the same list of forms and computer delivery formats for the tests published in the September 2011 notice. We also announced a sunset period during which States and local providers could continue to use tests with three-year NRS approvals otherwise expiring on February 2, 2013, during a transition period ending on June 30, 2014.

On January 25, 2013, we announced in the **Federal Register** (78 FR 5430) an extension of the approval period for tests approved for a three-year period beginning on February 2, 2010. The approval period was extended from February 2, 2013 to September 30, 2013, without affecting the sunset period ending on June 30, 2014.

On December 12, 2013, we published in the **Federal Register** (78 FR 75550) an annual notice of tests determined suitable for use in the NRS (December 2013 notice) that updated the August 2012 notice and provided an extension of the approval period for three tests initially approved for a three-year conditional period from February 2, 2010. The approval period was extended to June 30, 2015. We also announced an extension of the approval period for one additional test—a revised version of a test previously approved for a three-year conditional period from February 2, 2010. The approval period for that test also was extended to June 30, 2015.

On October 29, 2014, we published in the **Federal Register** (79 FR 64369) an annual notice of tests determined suitable for use in the NRS (October 2014 notice) that updated the December 2013 notice. We announced that the four tests with approvals extended through June 30, 2015, may be used in the NRS during a sunset period ending on June 30, 2016.

On August 12, 2015, we published in the **Federal Register** (80 FR 48304) an annual notice of tests determined suitable for use in the NRS (August 2015 notice) that updated the October 2014 notice. We announced that three tests, previously approved for an extended period through June 30, 2015, were approved for an extended period through February 2, 2017, and one test—a revised version of a test previously approved for an extended period through June 30, 2015—was approved for an extended period through February 2, 2017.

In this document, the Secretary announces the list of tests and test forms determined to be suitable for use in the NRS. These include: (1) The eight tests previously approved for a seven-year period from February 2, 2010 through February 2, 2017 and now approved for an extended period through February 2, 2019; (2) three tests previously approved for an extended period through February 2, 2017 and now approved for an extended period through February 2, 2019; and (3) one test—a revised version of a test previously approved for an extended period through February 2, 2017—for which the Secretary is extending approval through February 2, 2019. The Secretary is taking this action to extend the approval periods for all 12 of these tests through February 2, 2019 in light of the following intervening factors: (1) The Department's plan to implement new descriptors for the NRS educational functioning levels and implement new regulations in 34 CFR part 462 that became effective on September 19, 2016 and that will govern the assessment review process; (2) the Department's desire to minimize disruption for its grantees in the transition to AEFLA as authorized by WIOA, including with respect to measuring educational gain under the NRS; and (3) the attendant transition authority in section 503(c) of WIOA, which authorizes the Secretary of Education to ''take such actions as the Secretary determines to be appropriate to provide for the orderly transition'' from AEFLA as authorized by WIA to AEFLA as authorized by WIOA.

Approved Tests, Forms, and Approval Periods

Adult education programs must use only the approved forms and computer-based delivery formats for the tests published in this document. If a particular test form or computer delivery format is not explicitly specified for a test in this notice, it is not approved for use in the NRS.

Tests Previously Determined To Be Suitable for Use in the NRS for a Seven-Year Period From February 2, 2010 Through February 2, 2017 and Now Approved for an Extended Period Through February 2, 2019

(a) The Secretary has determined that the following test is suitable for use at all Adult Basic Education (ABE) and Adult Secondary Education (ASE) levels and at all English-as-a-Second-Language (ESL) levels of the NRS until February 2, 2019:

Comprehensive Adult Student Assessment Systems (CASAS) Reading Assessments (Life and Work, Life Skills,

Reading for Citizenship, Reading for Language Arts—Secondary Level). Forms 27, 28, 81, 82, 81X, 82X, 83, 84, 85, 86, 185, 186, 187, 188, 310, 311, 513, 514, 951, 952, 951X, and 952X of this test are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

(b) The Secretary has determined that the following tests are suitable for use at all ABE and ASE levels of the NRS until February 2, 2019:

(1) *Comprehensive Adult Student Assessment Systems (CASAS) Life Skills Math Assessments—Application of Mathematics (Secondary Level).* Forms 31, 32, 33, 34, 35, 36, 37, 38, 505, and 506 of this test are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

(2) *Massachusetts Adult Proficiency Test (MAPT) for Math.* This test is approved for use through a computer-adaptive delivery format. Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, College of Education, 156 Hills South, University of Massachusetts Amherst, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *www.sabes.org/.*

(3) *Massachusetts Adult Proficiency Test (MAPT) for Reading.* This test is approved for use through the computer-adaptive delivery format. Publisher: Massachusetts Department of Elementary and Secondary Education and University of Massachusetts Amherst, College of Education, 156 Hills South, University of Massachusetts Amherst, Amherst, MA 01003. Telephone: (413) 545–0564. Internet: *www.sabes.org/.*

(4) *Tests of Adult Basic Education (TABE 9/10).* Forms 9 and 10 are approved for use on paper and through the computer-based delivery format. Publisher: Data Recognition Corporation—CTB, 13490 Bass Lake Road, Maple Grove, MN 55311. Telephone: 800–538–9547. Internet: *www.ctb.com/.*

(5) *Tests of Adult Basic Education Survey (TABE Survey).* Forms 9 and 10 are approved for use on paper and through the computer-based delivery format. Publisher: Data Recognition Corporation—CTB, 13490 Bass Lake Road, Maple Grove, MN 55311. Telephone: (800) 538–9547. Internet: *www.ctb.com/.*

(c) The Secretary has determined that the following tests are suitable for use at all ESL levels of the NRS until February 2, 2019:

(1) *Basic English Skills Test (BEST) Literacy.* Forms B, C, and D are approved for use on paper. Publisher: Center for Applied Linguistics, 4646 40th Street NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org/.*

(2) *Tests of Adult Basic Education Complete Language Assessment System—English (TABE/CLAS–E).* Forms A and B are approved for use on paper. Publisher: Data Recognition Corporation—CTB, 13490 Bass Lake Road, Maple Grove, MN 55311. Telephone: (800) 538–9547. Internet: *www.ctb.com/.*

Tests Previously Approved for an Extended Period Through February 2, 2017 and Now Approved for an Extended Period Through February 2, 2019

(a) The Secretary has determined that the following tests are suitable for use at all ABE and ASE levels of the NRS until February 2, 2019:

(1) *General Assessment of Instructional Needs (GAIN)—Test of English Skills.* Forms A and B are approved for use on paper and through the computer-based delivery format. Publisher: Wonderlic Inc., 400 Lakeview Parkway, Suite 200, Vernon Hills, IL 60061. Telephone: (877) 605–9496. Internet: *www.wonderlic.com/.*

(2) *General Assessment of Instructional Needs (GAIN)—Test of Math Skills.* Forms A and B are approved for use on paper and through the computer-based delivery format. Publisher: Wonderlic Inc., 400 Lakeview Parkway, Suite 200, Vernon Hills, IL 60061. Telephone: (877) 605–9496. Internet: *www.wonderlic.com/.*

(b) The Secretary has determined that the following tests are suitable for use at all ESL levels of the NRS until February 2, 2019:

(1) *Basic English Skills Test (BEST) Plus 2.0.* Forms D, E, and F are approved for use on paper and through the computer-adaptive delivery format. Publisher: Center for Applied Linguistics, 4646 40th Street NW., Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org/.*

(2) *Comprehensive Adult Student Assessment Systems (CASAS) Life and Work Listening Assessments (LW Listening).* Forms 981L, 982L, 983L, 984L, 985L, and 986L are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

Revocation of Tests

Under certain circumstances, the Secretary may revoke the determination that a test is suitable (see 34 CFR 462.12(e)). If the Secretary revokes the determination of suitability, the Secretary announces through the **Federal Register** and posts on the Internet at *www.nrsweb.org* a notice of that revocation, along with the date by which States and local eligible providers must stop using the revoked test.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (such as braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in 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.

Program Authority: 20 U.S.C. 9212.

Dated: December 7, 2016.

Johan E. Uvin,

Deputy Assistant Secretary, Delegated the Duties of Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2016–29899 Filed 12–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0138]

Agency Information Collection Activities; Comment Request; International Early Learning Study (IELS) 2018 Field Test Recruitment

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 13, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0138. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: International Early Learning Study (IELS) 2018 Field Test Recruitment.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 404.

Total Estimated Number of Annual Burden Hours: 152.

Abstract: The International Early Learning Study (IELS), scheduled to be conducted in 2018, is a new study sponsored by the Organization for Economic Cooperation and Development (OECD), an intergovernmental organization of industrialized countries. In the United States, the IELS is conducted by the National Center for Education Statistics (NCES). The IELS focuses on young children and their cognitive and non-cognitive skills and competencies as they transition to primary school. The IELS is designed to examine: children's early learning and development in a broad range of domains, including social emotional skills as well as cognitive skills; the relationship between children's early learning and children's participation in early childhood education and care (ECEC); the role of contextual factors, including children's individual characteristics and their home backgrounds and experiences, in promoting young children's growth and development; and how early learning varies across and within countries prior to beginning primary school. In 2018, in the participating countries, including the United States, the IELS will assess nationally-representative samples of children ages 5.0–5.5 years (in kindergarten in the United States) through direct and indirect measures, and will collect contextual data about their home learning environments, ECEC histories, and demographic characteristics. The IELS will measure young children's knowledge, skills, and competencies in both cognitive and non-cognitive domains, including language and literacy, mathematics and numeracy, executive function/self-regulation, and social emotional skills. This assessment will take place as children are transitioning to primary school and will provide data on how U.S. children entering kindergarten compare with their international peers on skills deemed important for later success. To prepare for the main study that will take place in September-November 2018, the IELS countries will conduct a field test in the fall of 2017 to evaluate newly developed assessment instruments and questionnaires and to test the study operations. The U.S. IELS field test data collection will occur from September to October, 2017. In order to meet the international data collection schedule for the fall 2017 field test, field test respondent recruiting activities must begin by May 2017. This request is to conduct recruitment activities for the 2017 IELS field test.

Dated: December 7, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–29749 Filed 12–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR17–9–000.

Applicants: TPL SouthTex Transmission Company LP.

Description: Tariff filing per 284.123(b), (e)+(g): Filing Revised Operating Statement to be effective 11/1/2016; Filing Type: 1300.

Filed Date: 11/30/2016.

Accession Number: 201611305268.

Comments Due: 5 p.m. ET 12/21/16.

284.123(g) Protests Due: 5 p.m. ET 1/30/17.

Docket Number: PR17–10–000.

Applicants: Magic Valley Pipeline, L.P.

Description: Tariff filing per 284.123(e)/.224: Cancellation of Statement of Operating Conditions to be effective 12/1/2016; Filing Type: 800.

Filed Date: 11/30/2016.

Accession Number: 201611305277.

Comments/Protests Due: 5 p.m. ET 12/21/16.

Docket Number: PR17–11–000.

Applicants: Public Service Company of Colorado.

Description: Tariff filing per 284.123(b), (e)+(g): 20161201_SOR Two GRSA Rate Changes to be effective 11/1/2016; Filing Type: 1300.

Filed Date: 12/1/2016.

Accession Number: 201612015228.

Comments Due: 5 p.m. ET 12/22/16.

284.123(g) Protests Due: 5 p.m. ET 1/30/17.

Docket Number: PR17–12–000.

Applicants: Columbia Gas of Maryland, Inc.

Description: Tariff filing per 284.123(b), (e)/: CMD SOC Rates effective 10–27–2016 to be effective 10/27/2016; Filing Type: 980.

Filed Date: 12/1/2016.

Accession Number: 201612015299.

Comments/Protests Due: 5 p.m. ET 12/22/16.

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: RP16–137–009.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Compliance filing Rate Case Settlement RP16–137 to be effective 5/1/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5437.

Comments Due: 5 p.m. ET 12/19/16.

Docket Numbers: RP17–33–001.

Applicants: Equitrans, L.P.

Description: Compliance filing Equitrans' October 2016 Clean-Up Compliance Filing to be effective 11/17/2016.

Filed Date: 12/6/16.

Accession Number: 20161206–5121.

Comments Due: 5 p.m. ET 12/19/16.

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: December 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29788 Filed 12–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2226–000.

Applicants: McHenry Battery Storage, LLC.

Description: Report Filing: Refund Report of McHenry Battery Storage, LLC to be effective N/A.

Filed Date: 12/5/16.

Accession Number: 20161205–5443.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–62–001.

Applicants: Otter Tail Power Company.

Description: Tariff Amendment: Errata to Filing of Certificate of Concurrence to be effective 1/1/2016.

Filed Date: 12/6/16.

Accession Number: 20161206–5240.

Comments Due: 5 p.m. ET 12/13/16.

Docket Numbers: ER17–419–000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: Transource Pennsylvania, LLC and Transource Maryland, LLC submit Supplement to November 28, 2016 American Electric Power Service Corporation Formula Rate OATT Filing.

Filed Date: 12/5/16.

Accession Number: 20161205–5479.

Comments Due: 5 p.m. ET 12/19/16.

Docket Numbers: ER17–490–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2016–12–05 Reactive Power Requirements Automatic Voltage Regulator Amendment to be effective 3/6/2017.

Filed Date: 12/5/16.

Accession Number: 20161205–5438.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–491–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Cancel LGIA SP Blythe 1 Project SA No. 176 to be effective 2/8/2017.

Filed Date: 12/6/16.

Accession Number: 20161206–5155.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–493–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: DSA for the Santa Paula ES A Project, SA No. 917 to be effective 12/7/2016.

Filed Date: 12/6/16.

Accession Number: 20161206–5201.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–494–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Clean-up of OA, Definition Sec I–L re: accepted language effective as of 7/18/16 to be effective 1/1/2014.

Filed Date: 12/6/16.

Accession Number: 20161206–5202.

Comments Due: 5 p.m. ET 12/27/16.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD17–3–000.

Applicants: North American Electric Reliability Corporation, Western Electricity Coordinating Council.

Description: Joint Petition of the North American Electric Reliability Corporation and Western Electricity Coordinating Council for Approval of Interpretation of Regional Reliability Standard BAL–002–WECC–2a.

Filed Date: 11/9/16.

Accession Number: 20161109–5164.

Comments Due: 5 p.m. ET 1/5/17.

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: December 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29786 Filed 12–12–16; 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: RP17–214–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Dec 2016 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5133.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–215–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (Pioneer) to be effective 1/1/2017.
Filed Date: 11/30/16.
Accession Number: 20161130–5134.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–216–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: 11.2(a) Inflation Rates to be effective 1/1/2017.
Filed Date: 11/30/16.
Accession Number: 20161130–5159.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–217–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: 2017 Tioga Electric Charge to be effective 1/1/2017.
Filed Date: 11/30/16.
Accession Number: 20161130–5184.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–218–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Non-conforming Neg Rate Agmt due to Cap Rel (CCI East Texas 35829) to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5187.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–219–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta 8438 to various eff 12–1–2016) to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5188.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–220–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Petrohawk 41455 to texla 47450) to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5191.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–221–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Encana 37663 to texla 47451) to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5192.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–223–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20161130 Remove Non Conforming to be effective 1/1/2017.
Filed Date: 11/30/16.
Accession Number: 20161130–5221.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–224–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmts (ExGen 43197–3, 43197–5, 43198–4, 43198–6) to be effective 10/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5251.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–225–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing 11–30–2016 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5255.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–226–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Plymouth 792668 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5325.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–227–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Emera 510979 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5327.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–228–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: CNE Gas Supply Negotiated Rate to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5329.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–229–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Enhanced Energy—792657 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5333.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–230–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—BUG Release to Enhanced—792656 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5334.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–231–000.
Applicants: Dominion Transmission, Inc.
Description: § 4(d) Rate Filing: DTI—November 30, 2016 Negotiated Rate Agreements to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5335.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–232–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Energy America Contract Consolidation to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5347.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–233–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—ConEd release to Plymouth—8944211 to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5352.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–234–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmt—Exelon Generation & Mex Gas Supply to be effective 12/1/2016.
Filed Date: 11/30/16.
Accession Number: 20161130–5367.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: RP17–235–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker 12–1–16 to be effective 12/1/2016.
Filed Date: 12/1/16.

Accession Number: 20161201–5080.
Comments Due: 5 p.m. ET 12/13/16.
Docket Numbers: RP17–236–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—12/1/2016 to be effective 12/1/2016.
Filed Date: 12/1/16.
Accession Number: 20161201–5083.
Comments Due: 5 p.m. ET 12/13/16.

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: RP16–300–004.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc. submits Compliance Filing (Modification to Stipulation and Agreement).
Filed Date: 11/17/16.
Accession Number: 20161117–5096.
Comments Due: 5 p.m. ET 11/29/16.

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: December 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29787 Filed 12–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 15, 2016, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note** —Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1033RD—MEETING REGULAR MEETING

[December 15, 2016 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD16–1–000	Agency Administrative Matters.
A–2	AD16–7–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM17–8–000	Reform of Generator Interconnection Procedures and Agreements.
E–2	RM17–3–000	Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators.
E–3	ER16–1058–000 EL16–56–000	Consumers Energy Company.
E–4	ER15–1436–000	Entergy Gulf States Louisiana, LLC. Entergy Arkansas, Inc. Entergy Louisiana, LLC. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Texas, Inc.
	ER15–1453–000	Entergy Arkansas, Inc. Entergy Gulf States Louisiana, LLC. Entergy Louisiana, LLC. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Texas, Inc.
	ER16–1528–000 (Consolidated)	Entergy Arkansas, Inc. Entergy Louisiana, LLC. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Texas, Inc.
E–5	Omitted.	
E–6	Omitted.	
E–7	EL17–5–000	FLS Energy, Inc.

1033RD—MEETING REGULAR MEETING—Continued

[December 15, 2016 10:00 a.m.]

Item No.	Docket No.	Company
	QF16–876–001	Bear Gulch Solar, LLC.
	QF16–877–001	Fox Farm Solar, LLC.
	QF16–879–001	Couch Solar, LLC.
	QF16–880–001	Glass Solar, LLC.
	QF16–881–001	Janney Solar, LLC.
	QF16–882–001	Malt Solar, LLC.
	QF16–883–001	Martin Solar, LLC.
	QF16–884–001	Middle Solar, LLC.
	QF16–885–001	Ulm Solar, LLC.
	QF16–886–001	Valley View Solar, LLC.
	QF16–887–001	River Solar, LLC.
	QF16–888–001	Sage Creek Solar, LLC.
	QF16–889–001	Sypes Canyon Solar, LLC.
	QF16–899–001	Canyon Creek Solar, LLC.
E–8	EL17–6–000	Allco Renewable Energy Limted. Allco Finance Limited.
	QF11–193–002	Ecos Energy, LLC.
	QF11–194–002	
	QF11–195–002	
	QF11–196–002	
	QF11–197–002	
	QF11–198–002	
	QF11–199–002	
	QF11–200–002	
	QF11–201–002	
	QF11–202–002	
	QF11–203–002	
E–9	EL16–78–001 QF90–203–008.	Saguaro Power Company, A Limited Partnership.
	Gas	
G–1	PL17–1–000	Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs.
G–2	RP15–1022–000 RP16–581–000 (Consolidated) RP16–292–000 RP16–240–000 RP16–986–000 RP16–1045–000 (Not Consolidated)	Alliance Pipeline L.P.
G–3	RP16–440–000	ANR Pipeline Company.
G–4	OR16–26–000	Aircraft Service International Group, Inc. American Airlines, Inc. Delta Air Lines, Inc. Hooker's Point Fuel Facilities LLC. Southwest Airlines Co. United Aviation Fuels Corporation. United Parcel Service, Inc. v. Central Florida Pipeline LLC. Kinder Morgan Liquid Terminals LLC.
	Hydro	
H–1	P–14753–001 P–14777–001	Rivertec Partners, LLC. Loxbridge Partners, LLC.
	Certificates	
.		
C–1	CP16–12–000	Tennessee Gas Pipeline Company, LLC.
C–2	CP15–557–000	Total Peaking Services, LLC.

Issued: December 8, 2016.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://*

ferc.capitolconnection.org/ or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016–30066 Filed 12–9–16; 4:15 pm]

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: EC17–24–000.

Applicants: Cimarron Bend Wind Project I, LLC, Cimarron Bend Assets, LLC.

Description: Supplement to November 2, 2016 Joint Application for Authorization Under Section 203 of the Federal Power Act for Cimarron Bend Wind Project I, LLC and Cimarron Bend Assets, LLC.

Filed Date: 12/2/16.

Accession Number: 20161202–5351.

Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: EC17–25–000.

Applicants: Lindahl Wind Project, LLC.

Description: Supplement to November 2, 2016 Joint Application for Authorization Under Section 203 of the Federal Power Act for Lindahl Wind Project, LLC.

Filed Date: 12/2/16.

Accession Number: 20161202–5349.

Comments Due: 5 p.m. ET 12/12/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2564–007; ER10–2600–007; ER10–2289–007.

Applicants: Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Supplemental Workpapers to October 17, 2016 Notification of Changes in Status of Tucson Electric Power Company, et al.

Filed Date: 12/5/16.

Accession Number: 20161205–5292.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER10–2633–028; ER10–2570–028; ER10–2717–028; ER10–3140–028; ER13–55–018.

Applicants: Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generations, L.P.

Description: Notice of Non-Material Change in Status of the GE Companies.

Filed Date: 12/5/16.

Accession Number: 20161205–5297.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER16–2720–000.

Applicants: NextEra Energy Transmission Southwest, LLC.

Description: Joint Partial Settlement Agreement of NextEra Energy Transmission Southwest, LLC on behalf of itself and the Kansas Corporation Commission.

Filed Date: 12/2/16.

Accession Number: 20161202–5322.

Comments Due: 5 p.m. ET 12/23/16.

Docket Numbers: ER17–104–001.

Applicants: Broadview Energy KW, LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Tariff and Waivers to be effective 12/1/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5341.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–105–001.

Applicants: Broadview Energy JN, LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Tariff and Waivers to be effective 12/1/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5343.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–311–000.

Applicants: SR South Loving LLC.

Description: Report Filing: Supplement to SR South Loving Market Based Rate Application to be effective N/A.

Filed Date: 12/2/16.

Accession Number: 20161202–5309.

Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–483–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3280 Marshall Wind Energy and Westar Energy Meter Agent Agr to be effective 12/1/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5160.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–484–000.

Applicants: Midcontinent Independent System Operator, Inc., Northern States Power Company, a Minnesota corporation, Great River Energy.

Description: § 205(d) Rate Filing: 2016–12–05_SA 2960 Northern States Power-Great River Energy T–TIA (New Market) to be effective 9/29/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5259.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–485–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Queue Position AB2–139, Original Service Agreement No. 4581 to be effective 11/4/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5260.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–486–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–12–05_Revisions to Attachment TT Measurement and Verification Criteria to be effective 2/4/2017.

Filed Date: 12/5/16.

Accession Number: 20161205–5289.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–487–000.

Applicants: AEP Texas Central Company.

Description: § 205(d) Rate Filing: TCC-Rocksprings Val Verde Wind Interconnection Agreement to be effective 2/1/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5382.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–488–000.

Applicants: AEP Texas Central Company.

Description: § 205(d) Rate Filing: TCC–CPSB of San Antonio TX (CPS Energy) IA to be effective 11/15/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5384.

Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: ER17–489–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: AECC Avoca Delivery Point Agreement to be effective 11/7/2016.

Filed Date: 12/5/16.

Accession Number: 20161205–5387.

Comments Due: 5 p.m. ET 12/27/16.

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: December 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29785 Filed 12–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–482–000]

BREG Aggregator 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 BREG Aggregator LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the 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: December 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29789 Filed 12–12–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9956–31–Region 10]

Public Water Supply Supervision Program; Program Revision for the State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Oregon has revised its approved State Public Water Supply Supervision Primacy Program. Oregon has adopted regulations analogous to the Environmental Protection Agency's Revised Total Coliform Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these State program revisions. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian tribes within ''Indian country'' as defined by 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Oregon.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by January 12, 2017 to the Regional Administrator at the EPA address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 12, 2017, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 12, 2017. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the Oregon Health Authority, Drinking Water Program, 800 NE. Oregon Street, Suite 640, Portland, Oregon 97232 and between the hours of 9:00 a.m.–12:00 p.m. and 1:00–4:00 p.m. at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the documents which explain the rule can also be obtained at EPA's Web site at: *https://www.federalregister.gov/articles/2013/02/13/2012–31205/national-primary-drinking-water-regulations-revisions-to-the-total-coliform-rule* and *https://www.federalregister.gov/articles/2014/02/26/2014–04173/national-primary-drinking-water-regulations-minor-corrections-to-the-revisions-to-the-total-coliform,* or by writing or calling Ricardi Duvil, Ph.D. at the address below.

FOR FURTHER INFORMATION CONTACT: Ricardi Duvil, Ph.D., EPA Region 10, Drinking Water Unit, 1200 Sixth Avenue, Suite 900, OWW–193, Seattle, Washington 98101, telephone (206) 553–2578, email at *duvil.ricardi@epa.gov.*

SUPPLEMENTARY INFORMATION: *Authority:* Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: November 23, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–29885 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–9956–01]

Receipt of Information Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of information submitted pursuant to a rule, order, or consent agreement issued under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which information has been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the information received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Hannah Braun, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–5614; email address: *braun.hannah@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Chemical Substances and/or Mixtures

Information received about the following chemical substances and/or mixtures is identified in Unit IV.:

A. Ethanedioic acid (*CASRN 144–62–7*).

B. Octamethylcyclotetrasiloxane (D4) (*CASRN 556–67–2*).

II. Authority

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of information submitted pursuant to a rule, order, or consent agreement promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document, which announces the receipt of the information. Upon EPA's completion of its quality assurance review, the information received will be added to the docket identified in Unit IV., which represents the docket used for the TSCA section 4 rule, order, and/or consent agreement. In addition, once completed, EPA reviews of the information received will be added to the same docket. Use the docket ID number provided in Unit IV. to access the information received and any available EPA review.

EPA's dockets are available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

IV. Information Received

As specified by TSCA section 4(d), this unit identifies the information received by EPA.

A. Ethanedioic Acid (CASRN 144–62–7)

1. *Chemical Uses:* Ethanedioic acid is used as a rust remover; in antirust metal cleaners and coatings; as a flame-proofing and cross-linking agent in cellulose fabrics; as a reducing agent in mordent wool dying; as an acid dye stabilizing agent in nylon; as a scouring agent for cotton printing; and as a dye stripper for wool. Ethanedioic acid is also used for degumming silk; for the separation and recovery of rare earth elements from ore; for bleaching leather and masonry; for cleaning aluminum and wood decks; and as a synthetic intermediate for pharmaceuticals.

2. *Applicable Rule, Order, or Consent Agreement:* Chemical testing requirements for second group of high production volume chemicals (HPV2), 40 CFR 799.5087.

3. *Applicable docket ID number:* The information received will be added to docket ID number EPA–HQ–OPPT–2007–0531.

4. *Information Received:* EPA received the following information: Exemption Request.

B. Octamethylcyclotetrasiloxane (D4) (CASRN 556–67–2)

1. *Chemical Uses:* D4 is used as an intermediate for silicone copolymers and other chemicals. D4 is also used in industrial processing applications as a solvent (which becomes part of a product formulation or mixture), finishing agent, and an adhesive and sealant chemical. It is also used for both consumer and commercial purposes in paints and coatings, and plastic and rubber products and has consumer uses in polishes, sanitation, soaps, detergents, adhesives, and sealants.

2. *Applicable Rule, Order, or Consent Agreement:* Enforceable Consent Agreement for Environmental Testing for Octamethylcyclotetrasiloxane (D4) (CASRN 556–67–2).

3. *Applicable docket ID number:* The information received will be added to docket ID number EPA–HQ–OPPT–2012–0209.

4. *Information Received:* EPA received the following information: Benthic sampling events update.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 6, 2016.

Lynn Vendinello,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–29889 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2013–0710; FRL–9956–48–Region 5]

State Program Requirements; Approval of Program Revisions to Michigan's Clean Water Act Section 404 Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: In a July 5, 2013, letter, the Michigan Department of Environmental Quality (MDEQ) requested that the Environmental Protection Agency (EPA) approve revisions to the State's Clean Water Act (CWA) Section 404 permitting program that resulted from the enactment of Michigan Public Act 98 (PA 98). CWA Section 404 requires permits for dredge and fill activities in wetlands subject to federal jurisdiction. A state CWA Section 404 program must be conducted in accordance with the requirements of CWA Section 404 and its implementing regulations. Any revisions to state CWA programs must be approved by EPA before the revision may be implemented. Substantial modifications to a state's CWA Section 404 program become effective upon EPA approval and publication of EPA's decision in the **Federal Register**.

EPA has reviewed the proposed revisions to Michigan's Section 404

program within the sections of the Michigan statute modified by PA 98 and has found a majority of revisions within PA 98 sections to be consistent with the CWA and approvable. Other revisions are inconsistent with the CWA and thus not approvable.

DATES: Pursuant to 40 CFR 233.16(d)(4), the following revisions to Michigan's CWA Section 404 program are approved and in effect upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Melanie Burdick, Watersheds and Wetlands Branch (WW–16j), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604; call toll free: 800–621–8431, weekdays, 8:30 a.m. to 4:30 p.m. Central time; fax number: 312–697–2598; email address: *burdick.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the MDEQ's CWA Section 404 program. Approval of these provisions affects those seeking CWA Section 404 dredge and fill permits from the State of Michigan.

B. How can I get copies of this decision and other related information?

Docket

EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2013–0710; [FRL 9956–48–REGION 5]. All publicly available materials related to this action are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys *http://www.gpo.gov/fdsys/.* Insert: EPA–HQ–OW–2013–0710; FRL 9956–48–Region 5 in the search field.

II. Background and Scope of MDEQ Program Revisions

Under Section 404 of the CWA, permits are required for activities involving discharges of dredged or fill material to waters of the United States, including wetlands, lakes and streams. Michigan assumed CWA Section 404 permitting authority for its inland waters and wetlands in 1984. A state-assumed CWA Section 404 program must be conducted in accordance with the requirements of the CWA and its implementing regulations at 40 CFR part 233 (33 U.S.C. 1344(h), 40 CFR 233.1). In February 1997, EPA received a request from the Michigan Environmental Council to either ensure that the administration of Michigan's Section 404 program was consistent with the CWA, or withdraw Michigan's authority to administer the Section 404 program. In response to the request, EPA initiated an informal review of Michigan's administration of the Section 404 program. This Program Review was completed in April 2008. The 2008 Program Review identified several deficiencies in Michigan's Section 404 program. In response to the 2008 Program Review findings, MDEQ proposed a list of corrective actions to address those deficiencies. These corrective actions included making changes to the State's statutes governing state administration of the Section 404 program. On July 2, 2013, Michigan enacted PA 98 which contained significant amendments to Parts 301 (Inland Lakes and Streams) and 303 (Wetlands Protection) of Michigan's Natural Resources and Environmental Protection Act. The statutory amendments included changes intended to address the legislative corrective actions identified in EPA's 2008 Program Review; changes to the definition of contiguous wetlands regulated by Michigan's Section 404 program; the addition of new exemptions from permitting; and changes to the requirements for mitigating the effects of filling wetlands and other waters of the United States. The program revisions resulting from enactment of PA 98 are described EPA's *Supporting document for EPA decision to approve/deny Michigan's section 404 program statute changes in Public Act 98* which can be found in the docket for this action which is available electronically through *www.regulations.gov,* Docket ID No. EPA–HQ–OW–2013–0710.

On July 5, 2013, the MDEQ submitted PA 98 to EPA as a proposed revision to its CWA Section 404 program and requested EPA approval of the revisions. Per the regulations at 40 CFR 233.16(d)(3), EPA held a public hearing on December 11, 2013, sought public comment, and consulted with the Corps of Engineers and the U.S. Fish and Wildlife Service on the program revisions contained in PA 98. (Note: The U.S. National Marine Fisheries Service did not respond to EPA's request to consult.) The EPA also consulted with interested tribes per Executive Order 13175 and EPA policy.

In a letter to the MDEQ dated November 24, 2014, EPA requested clarification on the State's interpretation of a number of provisions within PA 98. The Michigan Department of the Attorney General responded to this request for clarification in a letter dated May 27, 2015. A copy of these letters can be found in the docket at: *www.regulations.gov,* Docket ID No. EPA–HQ–OW–2013–0710.

EPA has reviewed the proposed revisions within the sections of the Michigan statutes modified by PA 98, and has found a majority of the revisions to be fully consistent with the CWA and are approved. Other revisions are inconsistent and thus not approved.

III. Summary of Public Comments

The EPA solicited and received public comment on the proposed revisions to Michigan's Section 404 program resulting from PA 98 via testimony at a December 11, 2013, public hearing, electronically through *www.regulations.gov,* and by written submissions to the docket for this action. Through these efforts, EPA received a total of 286 comments. Of the 134 unique comments received: 82 expressed support of EPA approval of the proposed program revisions resulting from PA 98, 49 opposed EPA approval, and the remaining commenters did not express support for approval or disapproval of the revisions. The majority of commenters simply indicated whether they supported or did not support EPA approval of the program revisions in PA 98. While some commenters provided detailed rationale for their viewpoint, many did not. Most comments that supported approval of the program revisions in PA 98 also identified support for economic development in Michigan. Comments supporting approval of the revisions were from a diverse group of interests including agriculture, oil and gas, drain commissions, land development, home building, and manufacturing. Those commenters who expressed opposition to approval of the program revisions highlighted concern for environmental protection of rivers, lakes, and wetlands. These commenters felt that PA 98 did not adequately address the inconsistencies between Michigan's program and the CWA identified in EPA's 2008 Program Review and that additional provisions in PA 98 were inconsistent with the CWA requirements. Regardless of positions taken on EPA's approval of the

proposed program revisions, most commenters supported Michigan's retention of the CWA Section 404 permitting program. Consistent with Executive Order 13175 and EPA's policy on *Consultation and Coordination with Indian Tribes* (*http://www.epa.gov/tribal/consultation/consult-policy.htm*), EPA held government-to-government consultation teleconferences with four interested Michigan tribal organizations on January 23, 2014. EPA received written comments from two tribes. All public comments received, EPA's *Summary of Public Comments and Responsiveness Summary* and a summary of EPA's consultation with tribes can be found in the docket at: *www.regulations.gov,* Docket ID No. EPA–HQ–OW–2013–0710; [FRL 9956–48–REGION 5].

IV. Notice of Decision

Pursuant to 40 CFR 233.16(d)(4), EPA has reviewed the proposed revisions to Michigan's Section 404 program resulting from enactment of PA 98 for consistency with the CWA and its implementing regulations. Where EPA has determined that the proposed revisions meet the minimum requirements of the CWA and implementing regulations, EPA has approved the revisions which are in effect upon publication of this notice. EPA has disapproved those revisions that do not meet these minimum requirements.

EPA's review of the proposed revisions to Michigan's Section 404 program resulting from PA 98 does not constitute a comprehensive review of the State's program for conformance with the CWA, but rather addresses only proposed changes to Michigan's program related to PA 98 ensuring their consistency with CWA Section 404 and its implementing federal regulations. Information about the proposed revisions to Michigan's Section 404 program pursuant to PA 98, the public hearing, EPA's response to comments and other supporting documents are available at: *www.regulations.gov/* (insert: EPA–HQ–OW–2013–0710 in the search field).

I hereby provide public notice that EPA has taken final action on the proposed revisions to MDEQ's CWA Section 404 program as outlined in Tables 1–2 below.

TABLE 1—PROVISIONS OF PA 98 CONSISTENT WITH REQUIREMENTS OF CWA SECTION 404

PA 98 Provision—with descriptor	Decision
Sec. 1307 Permit Processing Timeframes	Approved.
Sec. 30101a. Statement of Purpose	Approved.
Sec. 30103(1)(d)(i) and (ii) Exemption for Maintenance of Agricultural Drains	Approved.
Sec. 30103(1)(e) Modification of Waste Treatment Exemption	Approved.
Sec. 30103(1)(f) Modification of Minor Drainage Exemption	Approved.
Sec. 30103(1)(g)(i)–(vi) and (viii) Modification of Drain Maintenance Exemption	Approved.
Sec. 30103(3) Definition of Agricultural Drain Added	Approved.
Sec. 30104 Changes in Michigan's Fee Requirements	Approved.
Sec. 30105(3) and (5) Modification of Public Notice Provisions	Approved.
Sec. 30105(8)(b) Modification of Maintenance and Repair of Existing Pipelines Provision	Approved.
Sec. 30105(9) Modification of Section Authorizing Conditions for a Minor Project Category or General Permit	Approved.
Sec. 30105(11) General Permit for Drain Activities	Approved.
Sec. 30305(2)(d) Modification of Exemption for Grazing	Approved.
Sec. 30305(2)(e) Modification of Exemption for Farming, Horticulture, Agriculture, Silviculture, Lumbering and Ranching.	Approved.
Sec. 30305(2)(h) Modification of Agricultural Drain Maintenance Exemption	Approved.
Sec. 30305(2)(i) Exemption for Drain Maintenance	Approved: EPA recommends the language is clarified.
Sec. 30305(2)(j) Modification of Road Maintenance Exemption	Approved.
Sec. 30305(2)(j) Deletion of Farm Production and Harvesting Exemption	Approved.
Sec. 30305(2)(k) Modification of Maintenance of Public Streets Exemption	Approved.
Sec. 30305(2)(l) Modification of Utility Line Maintenance Exemption	Approved: with the condition that the 2011 MOA will be revised.
Sec. 30305(2)(o) Deletion of Construction of Tailings Basin Exemption	Approved.
Sec. 30305(4)(a) Modification of Wetlands Incidentally Created as Part of Sand, Gravel or Mineral Mining Exemption	Approved.
Sec. 30305(8) Definition of Agricultural Drain	Approved.
Sec. 30306(1)–(6) Modification of Application Requirements and Fees	Approved.
Sec. 30306(7) Modification of Conditional Permits Under Emergency Conditions	Approved.
Sec. 30306b Modification of Application Fees and Other Requirements	Approved.
Sec. 30311(5)–(6) Consideration of Feasible and Prudent Alternatives	Approved.
Sec. 30311a Deletion of Former Sections 30311a(2)–(5) on Consideration of Feasible and Prudent Alternatives	Approved.
Sec. 30311d(5) Compensatory Mitigation Ratios	Approved.
Sec. 30311d(6) Conservation Mitigation Credits for Easements for Impacted Agricultural Sites	Approved: the provision for a ''stewardship fund.''
Sec. 30311d(7) Stewardship Fund	Approved.
Sec. 30311d(8)(a)–(e) Compensatory Mitigation Rulemaking	Approved.
Sec. 30311d(9)(a),(b), and (c) Rulemaking to Encourage Banks	Approved.
Sec. 30311d(10) Mitigation Bank Funding Program	Approved.
Sec. 30312(5) General Permit Authority	Approved.
Sec. 30312(6) General Permit for Blueberry Farming	Approved.
Sec. 30312(7) General Permit for Blueberry Farming	Approved.

TABLE 1—PROVISIONS OF PA 98 CONSISTENT WITH REQUIREMENTS OF CWA SECTION 404—Continued

PA 98 Provision—with descriptor	Decision
Sec. 30321(7) Defines Drains, Ditches, etc. as Not being Wetlands	Approved: the second sentence "A temporary obstruction of drainage . . . identified as a wetland pursuant to section 30301(2)."
Sec. 30328 State Program Limited to Navigable Waters and Waters of the U.S.	Approved.

TABLE 2—PROVISIONS OF PA 98 INCONSISTENT WITH REQUIREMENTS OF CWA SECTION 404

PA 98 Provision—with descriptor	Decision
Sec. 30103(1)(g)(vii) Modification of Drain Maintenance Exemption	Disapproved.
Sec. 30103(1)(m) Exemption for Controlled Livestock Access	Disapproved.
Sec. 30305(2)(m) Modification of Utility Line Installation Exemption	Disapproved.
Sec. 30305(2)(o) Exemption for Placement of Biological Residues in Wetlands	Disapproved.
Sec. 30305(4)(b) Modification of Exemption for Wetlands Created as a result of Construction or Operation of a Waste Treatment Pond or Storm Water Facility.	Disapproved.
Sec. 30305(4)(d) Modification of Exemption for Wetlands Created as a Result of Construction of Drains to Remove Excess Soil Moisture from Upland Areas Primarily Used for Agriculture.	Disapproved.
Sec. 30305(4)(e) Exemption for Wetlands Formed in Roadside Ditches	Disapproved.
Sec. 30305(4)(f) Exemption for Wetlands Created as a Result of Agricultural Soil and Water Conservation Practices	Disapproved.
Sec. 30305(5) Contiguous Waters as a Result of Excavation	Disapproved.
Sec. 30311(7) Consideration of Feasible and Prudent Alternatives	Disapproved.
Sec. 30311d(6) Conservation Mitigation Credits for Easements for Impacted Agricultural Sites	Disapproved the statement: "protection and restoration of the impacted site."
Sec. 30321(5) Definition of "Not Contiguous"	Disapproved.
Sec. 30321(6) Use of Drains to Establish Jurisdiction	Disapproved.
Sec. 30321(7) Defines Drains, Ditches, etc. as Not Being Wetlands	Disapproved: the first sentence "A drainage structure such as a culvert, ditch, or channel, in and of itself, is not a wetland."

Authority: This action is taken under the authority of Section 404 of the Clean Water Act as amended, 42 U.S.C. 1344.

Dated: December 2, 2016.

Robert A. Kaplan,

Acting Regional Administrator.

[FR Doc. 2016–29888 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0021; FRL–9955–75]

Pesticide Product Registrations; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 12, 2017.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

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

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by EPA on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation Web site for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*). EPA received the following applications to register pesticide products containing active ingredients not included in any currently registered pesticide products:

1. *File Symbol:* 432–RLII. *Docket ID Number:* EPA–HQ–OPP–2016–0581. *Applicant:* Bayer Environmental Science, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product Name:* Bayothrin Technical. *Active Ingredient:* Insecticide—Transfluthrin at 99%. *Proposed Use:* Indoor (residential, commercial, and military use) and limited outdoor residential. *Contact:* RD.

2. *File Symbol:* 62719–AOI. *Docket ID Number:* EPA–HQ–OPP–2016–0560. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. *Product Name:* GF–3206. *Active Ingredient:* Herbicide—Florpyrauxifen-benzyl at 2.7%. *Proposed Use:* Rice. *Contact:* RD.

3. *File Symbol:* 62719–AOO. *Docket ID Number:* EPA–HQ–OPP–2016–0560. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. *Product Name:* GF–3301. *Active Ingredient:* Herbicide—Florpyrauxifen-benzyl at 26.5%. *Proposed Use:* Rice and freshwater aquatic vegetation. *Contact:* RD.

4. *File Symbol:* 62719–AOT. *Docket ID Number:* EPA–HQ–OPP–2016–0560. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. *Product Name:* Rinskor Technical. *Active Ingredient:* Herbicide—Florpyrauxifen-benzyl at 94.6%. *Proposed Use:* Rice and freshwater aquatic vegetation. *Contact:* RD.

5. *File Symbol:* 62719–TNN. *Docket ID Number:* EPA–HQ–OPP–2016–0560. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. *Product Name:* GF–3480. *Active Ingredients:* Herbicide—Florpyrauxifen-benzyl at 2.13% and Cyhalofop-butyl at 10.64%. *Proposed Use:* Rice. *Contact:* RD.

6. *File Symbol:* 62719–TNR. *Docket ID Number:* EPA–HQ–OPP–2016–0560. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. *Product Name:* GF–3565. *Active Ingredients:* Herbicide—Florpyrauxifen-benzyl at 1.3% and Penoxsulam at 2.1%. *Proposed Use:* Rice. *Contact:* RD.

7. *File Symbol:* 71840–EE. *Docket ID Number:* EPA–HQ–OPP–2016–0609. *Applicant:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. *Product Name:* Velifer Fungal Contact Insecticide. *Active Ingredient:* Insecticide—*Beauveria bassiana* strain PPRI 5339 at 8.00%. *Proposed Use:* Greenhouse-grown ornamentals, fruits, vegetables, herbs and spices, and vegetable, fruit, and herb transplants for the consumer market. *Contact:* BPPD.

8. *File Symbol:* 71840–ER. *Docket ID Number:* EPA–HQ–OPP–2016–0609. *Applicant:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. *Product Name: Beauveria bassiana* strain PPRI 5339 Technical. *Active Ingredient:* Insecticide—*Beauveria bassiana* strain PPRI 5339 at 96.0%. *Proposed Use:* Manufacturing of end-use pesticide products. *Contact:* BPPD.

9. *File Symbol:* 73771–RN. *Docket ID Number:* EPA–HQ–OPP–2016–0578. *Applicant:* Verdesian Life Sciences U.S., LLC, 1001 Winstead Dr., Suite 480, Cary, NC 27513. *Product Name:* Calciphite. *Active Ingredient:* Biochemical Systemic Acquired Resistance (SAR)—Calcium Salts of Phosphorous Acid at 95%. *Proposed Use:* Biochemical manufacturing-use product. *Contact:* BPPD.

10. *File Symbol:* 73771–RR. *Docket ID Number:* EPA–HQ–OPP–2016–0578. *Applicant:* Verdesian Life Sciences U.S., LLC, 1001 Winstead Dr., Suite 480, Cary, NC 27513. *Product Name:* Fungi-Phite Ca. *Active Ingredient:* Biochemical Systemic Acquired Resistance (SAR)—Calcium Salts of Phosphorous Acid at 40%. *Proposed Use:* Biochemical end-use product/systemic fungicide. *Contact:* BPPD.

11. *File Symbol:* 91197–R. *Docket ID Number:* EPA–HQ–OPP–2016–0251. *Applicant:* AFS009 Plant Protection, Inc., 104 T.W. Alexander Dr., Building 18, Research Triangle Park, NC 27709. *Product Name:* Howler™ Technical. *Active Ingredient:* Fungicide—*Pseudomonas chlororaphis* strain AFS009 at 100%. *Proposed Use:* Manufacturing use. Note: In the **Federal Register** of May 25, 2016 (81 FR 33251)

(FRL–9946–40), EPA announced receipt of applications to register three pesticide products containing the active ingredient *Pseudomonas chlororaphis* subsp. *aurantiaca* strain AFS009 (File Symbols 91197–R, 91197–E, and 91197–G). Since that time, the applicant provided additional data on the identity of the active ingredient in these pesticide products to EPA. After reviewing these data, EPA now considers the correct identity of the active ingredient in these pesticide products to be *Pseudomonas chlororaphis* strain AFS009 and not *Pseudomonas chlororaphis* subsp. *aurantiaca* strain AFS009. In order to give the public an opportunity to comment on this new information, EPA is republishing its receipt of these applications with an updated and accurate description. *Contact:* BPPD.

12. *File Symbol:* 91197–E. *Docket ID Number:* EPA–HQ–OPP–2016–0251. *Applicant:* AFS009 Plant Protection, Inc., 104 T.W. Alexander Dr., Building 18, Research Triangle Park, NC 27709. *Product Name:* Howler™ T&O. *Active Ingredient:* Fungicide—*Pseudomonas chlororaphis* strain AFS009 at 50.0%. *Proposed Use:* Turf and ornamental plants. *Contact:* BPPD.

13. *File Symbol:* 91197–G. *Docket ID Number:* EPA–HQ–OPP–2016–0251. *Applicant:* AFS009 Plant Protection, Inc., 104 T.W. Alexander Dr., Building 18, Research Triangle Park, NC 27709. *Product Name:* Howler™. *Active Ingredient:* Fungicide—*Pseudomonas chlororaphis* strain AFS009 at 50.0%. *Proposed Use:* Agricultural sites, including berries, citrus, cotton, cucurbits, flowers, fruiting vegetables, herbs, leafy vegetables, cole crops, ornamentals, peanut, pome fruit, shade house, soybean, stone fruit, tobacco, tree nuts, tubers, wheat, and turf, and residential sites. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 2, 2016.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–29887 Filed 12–12–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 12–268; AU Docket No. 14–252; WT Docket No. 12–269; DA 16–1354]

Clearing Target of 84 Megahertz Set for Stage 4 of the Broadcast Television Spectrum Incentive Auction; Stage 4 Bidding in the Reverse Auction Will Start on December 13, 2016

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Incentive Auction Task Force and Wireless Telecommunications Bureau announce the spectrum clearing target of 84 megahertz and band plan for Stage 4 of the incentive auction, and that bidding in Stage 4 of the reverse auction is scheduled to begin on December 13, 2016. This document also announces details and dates regarding bidding and the availability of educational and informational materials for reverse and forward auction bidders eligible to participate in Stage 4; the availability of Stage 4 bidding and timing information in the Incentive Auction Public Reporting System; and the importance of bidder contingency plans. Finally, this document reminds each reverse and forward auction applicant of its continuing obligations under the FCC's rules.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For general auction questions, contact Linda Sanderson at (717) 338–2868. For reverse auction or forward auction legal questions, refer to the contact information listed in the *Incentive Auction Stage 4 Clearing Target Public Notice.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Incentive Auction Stage 4 Clearing Target Public Notice,* GN Docket No. 12–268, AU Docket No. 14–252, WT Docket No. 12–269, DA 16–1354, released December 9, 2016. The complete text of the *Incentive Auction Stage 4 Clearing Target Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* the Auction 1000 Web site at *http://www.fcc.gov/auctions/1000,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Incentive Auction Task Force (Task Force) and the Wireless Telecommunications Bureau (Bureau) announce the 84 megahertz spectrum clearing target that has been set by the Auction System's optimization procedure for Stage 4 of the incentive auction, as well as the band plan associated with the 84 megahertz spectrum clearing target, which includes seven Category 1 generic license blocks with zero impairments for each of the 416 Partial Economic Areas (PEAs). The Task Force and Bureau also provide details and specific dates regarding bidding and the continuing availability of educational materials, and remind reverse and forward auction applicants of their continuing obligations.

I. Stage 4 Clearing Target and Band Plan

2. The Auction System's clearing target determination procedure has set a spectrum clearing target of 84 megahertz for Stage 4 of the incentive auction. Under the band plan associated with this spectrum clearing target, 70 megahertz, or seven paired blocks, of licensed spectrum will be offered in the forward auction on a nationwide basis.

3. The generic license blocks offered in Stage 4 of the forward auction under this band plan will consist of a total of 2,912 Category 1 blocks (zero percent impaired). There will be no Category 2 blocks offered under this band plan. In other words, seven 100% unimpaired blocks in all 416 PEAs for a total of 2,912 Category 1 blocks will be offered in Stage 4.

4. The clearing target for Stage 4 was determined by applying the procedure the Commission adopted in the *Auction 1000 Bidding Procedures Public Notice,* 80 FR 61917, October 14, 2015, using the same objectives as in the initial clearing target optimization and taking into account the additional channels in the TV band and any participating stations that have dropped out of the auction in the previous stage. Based on the new provisional television channel assignment plan, the nationwide impaired weighted-pops were calculated on a 2x2 cell level and the one-block-equivalent nationwide standard for impairments was applied.

II. Important Information Concerning the Reverse Auction (Auction 1001)

5. *Educational Materials.* The Task Force and Bureau remind all reverse auction bidders of the continuing availability of educational materials regarding bidding in the clock phase of the reverse auction on the Auction 1001 Web site under the Education section. Specifically, such bidders are encouraged to review the Reverse Auction Clock Phase Tutorial and the Reverse Auction New Stage Tutorial prior to the start of Stage 4 of the reverse auction.

6. *Accessing the Auction System for Stage 4.* Any bidder that had one or more stations with the status ''Frozen—Provisionally Winning'' at the end of the previous stage will be able to log in to the Reverse Auction Bidding System for Stage 4. Starting at 10:00 a.m. Eastern Time (ET) on December 9, 2016, such a bidder can log in and view the bidding status, and, where applicable, the following information for Round 1 of the new stage for each of the bidder's stations that qualified to participate in the clock rounds of the reverse auction: Initial bid option, available bid options, vacancy ranges, and clock price offers.

7. A bidder will need to use the RSA SecurID® tokens (RSA tokens) it used for placing bids in the previous stage to access the Reverse Auction Bidding System for Stage 4. RSA tokens with previously set personal identification numbers (PINs) may be used without setting a new PIN. Any authorized bidder that has not already set a PIN for his or her designated RSA token (*e.g.,* an authorized bidder recently identified on FCC Form 177 or one using a replacement RSA token) must set a PIN as described in the materials sent with the Second Confidential Status Letter. Each bidder will be able to access the Reverse Auction Bidding System at the same web address used during the previous stage. In addition, the FCC Auction Bidder Line phone number for Stage 4 will be the same number used in previous stages. The Auction Bidder Line will be available from 9:00 a.m. to 5:30 p.m. ET starting on December 12, 2016.

8. *Returning RSA Tokens.* Each bidder that did not have any stations with the status ''Frozen—Provisionally Winning'' at the end of the previous stage will be sent a pre-addressed, stamped envelope to return its RSA tokens.

9. *Clocks Rounds Start Date and Round Schedule.* Bidding in the clock rounds of Stage 4 of Auction 1001 will begin on Tuesday, December 13, 2016. Bidders should note that the schedule for two-round days in Stage 4 is different from the schedule for previous two-round days in earlier stages. In Stage 4, bidding rounds will last one hour instead of two hours during the two-round schedule. From Tuesday, December 13, 2016, through Friday December 16, 2016, the schedule will be: Bidding Round (10:00 a.m.–11:00 a.m. ET) and Bidding Round (4:00 p.m.–5:00 p.m. ET). Starting on Monday, December 19, 2016, and continuing until further notice, the schedule will be: Bidding Round (10:00 a.m.–11:00 a.m. ET); Bidding Round (1:00 p.m.–2:00 p.m. ET) and Bidding Round (4:00 p.m.–5:00 p.m. ET). Bidding will be suspended after the second round (1:00 p.m.–2:00 p.m. ET) on Friday, December 23, 2016, and there will be no bidding from Monday, December 26, 2016, through Monday, January 2, 2017, in observance of the holiday period. Shortly before the holiday break, the Bureau will announce in the Reverse Auction Bidding System the bidding schedule that will be used when bidding resumes on Tuesday, January 3, 2017. During the holiday break, the Auction Bidder Line will not be available. The Bureau may adjust the number and length of bidding rounds based upon its monitoring of the bidding and assessment of the reverse auction's progress. The Bureau will provide notice of any adjustment by announcement in the Reverse Auction Bidding System during the course of the auction.

10. *Reset Base Clock Price and Clock Decrement for Round 1 of Stage 4.* The base clock price has been reset to $900 per unit of volume for Stage 4 of the reverse auction. The price decrement for Round 1 of Stage 4 of the reverse auction will be five percent of the reset base clock price.

III. Important Information Concerning the Forward Auction (Auction 1002)

11. *Bidding in Stage 4.* On the next business day after Stage 4 of the reverse auction concludes, the Task Force and Bureau will announce the initial bidding schedule for Stage 4 of the forward auction in the Forward Auction Bidding System and in the Incentive Auction Public Reporting System (PRS), including the date and time of the first round of bidding. Bidding in Stage 4 of the forward auction will begin no later than three business days after this announcement. Each bidder is strongly encouraged to regularly monitor the PRS for announcements and other important information related to bidding in Stage 4 of the forward auction. The PRS can be accessed directly at *auctiondata.fcc.gov* and from a link under the Results section of the Auction 1001 Web site (*www.fcc.gov/auctions/1001*) and the Auction 1002 Web site (*www.fcc.gov/auctions/1002*).

12. *Accessing the Forward Auction Bidding System in Stage 4.* Any bidder that is eligible to bid in Stage 4 of the forward auction will be able to access the Forward Auction Bidding System beginning at 10:00 a.m. ET on January 5, 2017. There will be zero impairments in the band plan for Stage 4. Therefore, unlike in previous stages, there is no need for bidders to access the Forward Auction Bidding System for purposes of downloading impairment data prior to the start of the reverse auction. Eligible bidders can log in to the Forward Auction Bidding System using the same RSA tokens, Web address, and instructions provided in the bidder registration materials they received prior to the start of Stage 4 when the system becomes available on January 5, 2017. All bidder-specific information, including stage transition files and bidding information from previous stages, is non-public and provided only to eligible bidders to help guide their bidding in Stage 4 of the forward auction. This information will not be disclosed publicly until after the auction concludes. Any bidder with zero eligibility by the end of Stage 3 will not be eligible to bid in Stage 4 of the forward auction.

13. *Returning RSA Tokens.* Each bidder that is no longer eligible to participate in the forward auction (*i.e.,* any bidder that has zero eligibility by the end of Stage 3) will be sent a pre-addressed, stamped envelope to return its RSA tokens.

14. *Activity Rule for Round 1 of Stage 4.* Starting in the first round of Stage 4, each bidder must be active on at least 95 percent of its bidding eligibility to maintain its bidding eligibility for the next round. Any changes to the activity requirement in subsequent rounds will be announced via the Forward Auction Bidding System. Prior to the start of Stage 4 of the forward auction, a bidder may view its initial eligibility and required activity for Round 1 by downloading the My Bidder Status file under the Bid/Status tab of the Downloads screen.

15. *Clock Increment for Round 1 of Stage 4.* An increment of five percent will be used to set clock prices for products in Round 1 of Stage 4 of the forward auction. Prior to the announcement of the forward auction bidding schedule for Stage 4, a bidder may view the clock prices for Round 1 by downloading the Sample Bids file in the Forward Auction Bidding System.

16. *Final Stage Rule Status.* In Stage 4, the first component of the final stage

rule is no longer based on auction proceeds but instead will be met when the average price per MHz-pop for Category 1 blocks in the high-demand PEAs is at least $1.25 per MHz-pop. Using the formula for calculating the average price and based on the bidding results from Stage 3 and the number of blocks available in Stage 4, the average price per MHz-pop for Category 1 blocks in the high-demand PEAs will be $1.21859 . . . at the start of Stage 4. This amount is approximately three cents short of the required $1.25 benchmark.

17. The second component of the final stage rule remains the same as in previous stages: The estimated auction net proceeds must be sufficient to cover winning bidder payments for broadcasters and other cost requirements.

IV. Public Reporting System

18. As was the case for previous stages of the incentive auction, publicly available bidding and timing information for Stage 4 of the reverse auction and the forward auction will be accessible through the PRS. The PRS will display the same types of bidding and other information for Stage 4 as was available for previous stages. For more information about the types of bidding and other information available in the PRS, please see the *Public Reporting System Public Notice.*

V. Bidding Contingency Plan

19. The Task Force and Bureau remind each bidder that it should maintain and continue to refine as necessary a comprehensive contingency plan that can be quickly implemented in case difficulties arise when participating in the incentive auction. While the Commission will correct any problems with Commission-controlled facilities, each bidder is solely responsible for anticipating and overcoming problems such as bidder computer failures or other technical issues, loss of or problems with data connections (including those used to access and place bids in the Reverse Auction Bidding System or the Forward Auction Bidding System), telephone service interruptions, adverse local weather conditions, unavailability of its authorized bidders, or the loss or breach of confidential security codes.

20. A bidder should ensure that each of its authorized bidders can access and place bids in the Reverse Auction Bidding System or Forward Auction Bidding System, and it should not rely upon the same computer or data connection to do so. Contingency plans should include arrangements for accessing and placing bids in the Reverse Auction Bidding System or the Forward Auction Bidding System from one or more alternative locations. A bidder's contingency plans might also include, among other arrangements, using the Auction Bidder Line as an alternative method of bidding in the incentive auction.

21. Each reverse auction bidder is further reminded that a failure to submit a bid for a station with the status ''Bidding'' is considered to be a missing bid and will be interpreted as a bid to drop out of the auction. The Reverse Auction Bidding System will automatically submit a bid to drop out of the auction for all stations with missing bids. The status of a station that bids to drop out of the auction will be ''Exited—Voluntarily'' once bid processing is complete for the round (unless the station first becomes frozen). Once a station has the status ''Exited,'' a bidder cannot bid for the station in any subsequent round or stage.

22. The Task Force and Bureau remind each forward auction bidder that its failure to submit a bid during a clock round will be considered a ''missing'' bid and will be treated as a bid for zero blocks, at the lowest price in the price range for the round, for any products in which the bidder had processed demand from the previous round. If there is insufficient excess demand, the ''missing'' bid may be partially applied or not applied at all and the bidder will continue to have processed demand for the product in the next round. If the ''missing'' bid is partially or fully applied, that bidder's eligibility may be irrevocably reduced in the next round.

VI. Continuing Obligations

23. *Due Diligence.* The Task Force and Bureau remind each reverse and forward auction bidder that it is solely responsible throughout the auction for investigating and evaluating all legal, technical, and marketplace factors and risks that may have a bearing on the bid(s) it submits in the incentive auction. For more information, each bidder should review the *Auction 1000 Application Procedures Public Notice,* 80 FR 66429, October 29, 2015.

24. *Prohibited Communications Reminder.* The Task Force and Bureau remind all full power and Class A broadcast television licensees, as well as forward auction applicants, that they remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions. For communications among broadcasters, and between broadcasters and forward auction applicants, the prohibited communication period ends when the results of the incentive auction are announced by public notice. For communications among forward auction applicants, the period ends on the deadline for making down payments on winning bids. A party that is subject to the prohibition remains subject to the prohibition regardless of developments during the auction process.

25. The Task Force and Bureau further remind each full power and Class A broadcast television licensee that even though communicating whether or not a party filed an application to participate in the reverse auction does not violate the rules prohibiting certain communications, communicating that a party ''is not bidding'' in or has ''exited'' the reverse auction could constitute an apparent violation that needs to be reported. All forward auction applicants, including those that did not qualify to bid and those that have since lost eligibility to bid in the forward auction, are also reminded that they remain subject to the rules prohibiting certain communications until the deadline for making down payments on winning bids.

26. The Commission's rules require covered parties to report violations of the prohibition of certain communications to Margaret W. Wiener, Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: *auction1000@fcc.gov.* Any report in hard copy must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Failure to make a timely report under the rule constitutes a continuing violation of the rule, with attendant consequences.

27. For a thorough discussion of the prohibition of certain communications during the incentive auction, please refer to the *Prohibited Communications Public Notice,* 80 FR 63216, October 19, 2015.

28. *Making Modifications to Applications.* The Task Force and Bureau remind each reverse and forward auction applicant that the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its application to participate in Auctions 1001 and 1002, respectively. Each applicant should amend its application to furnish additional or

corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for an amendment. Any applicant that needs to make changes must do so using the procedures described in the *Auction 1000 Application Procedures Public Notice* and the *Auction 1002 Qualified Bidders Public Notice.*

29. To make changes to its FCC Form 177 or FCC Form 175 while the Auction System is available, the applicant must make those changes electronically using the Auction System and submit a letter briefly summarizing the changes to its FCC Form 177 by email to *auction1001@fcc.gov,* or to its FCC Form 175 by email to *auction1002@fcc.gov.* To make changes at a time when the Auction System is unavailable, the applicant must make those changes using the procedures described in the *Auction 1000 Application Procedures Public Notice.* All changes are subject to review by Commission staff.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2016–30000 Filed 12–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0917, 3060–0918]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 13, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0917.

Title: CORES Registration Form, FCC Form 160.

Form Number: FCC Form 160.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; individuals or households; not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondent and Responses: 93,000 respondents; 93,000 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the *Debt Collection Act of 1996* (DCCA), Public Law 104–134, Chapter 10, Section 31001.

Total Annual Burden: 15,531 hours.

Total Annual Cost: None.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) covering the PII in the CORES information system is being updated. Upon completion it will be posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: The FCC is not requesting that respondents submit confidential information to the Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459. The FCC has a system of records, FCC/OMD–25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160, which is posted at: *https://www.fcc.gov/general/privacy-act-information#systems.*

The FCC will also redact PII submitted on this form before it makes FCC Form 160 available for public inspection. FCC Form 160 includes a ''privacy statement'' to inform applicants (respondents) of the FCC's need to obtain the information and the protections that the FCC has in place to protect PII.

Needs and Uses: The Commission is revising Form 160 to include Restricted Use FRNs. These FRNs are created in the FCC's Commission Registration System (CORES) and are used only for Form 323, Ownership Report for Commercial Broadcast Station (OMB Control No. 3060–0010) and Form 323–E, Ownership Report for Noncommercial Educational Broadcast Station (OMB Control No. 3060–0084). Registering for a Restricted Use FRN will require the same information as other FRNs with the following differences: respondents will be required to enter a date of birth and only the last four digits of the Social Security Number.

Respondents use FCC Form 160 to register in CORES. When registering, the respondent receives a unique FCC Registration Number (FRN), which is required for anyone doing business with the Commission. Respondents may also register in CORES on-line at *https://apps.fcc.gov/cores.* FCC Form 160 is used to collect information that pertains to the entity's name, address, contact representative, telephone number, email address(es), and fax number. The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both ''feeable'' and ''nonfeeable'' services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES System is also a means of ensuring that the Commission operates in compliance with the *Debt Collection Improvement Act of 1996* (DCCA), Public Law 104–134, Chapter 10, Section 31001.

On November 19, 2010, the FCC adopted a *Notice of Proposed*

Rulemaking (NPRM), MD Docket No. 10–234, FCC 10–192, Amendment of Part 1 of the Commission's Rules Concerning Practice and Procedure, Amendment of CORES Registration System. The NPRM proposes to eliminate some of the FCC's exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number (''TIN'') at the time of registration; require FRN holders to provide their email address(es); give FRN holders the option to identify multiple points of contact; and require FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. All remaining existing information collection requirements would stay as they are.

OMB Control Number: 3060–0918.

Title: CORES Update/Change Form, FCC Form 161.

Form Number: FCC Form 161.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; individuals or households; not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents and Responses: 80,000 respondents; 80,000 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the *Debt Collection Act of 1996* (DCCA), Public Law 104–134, Chapter 10, Section 31001.

Total Annual Burden: 13,360 hours.

Total Annual Costs: None.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) covering the PII in the CORES information system is being updated. Upon completion it will be posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: The FCC is not requesting that respondents submit confidential information to the Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459. The FCC has a system of records, FCC/OMD–25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 161, which is posted at: *https://www.fcc.gov/general/privacy-act-information#systems.*

The FCC will also redact PII submitted on this form before it makes Start Printed Page 41797FCC Form 161 available for public inspection. FCC Form 161 includes a ''privacy statement'' to inform applicants (respondents) of the FCC's need to obtain the information and the protections that the FCC has in place to protect PII.

Needs and Uses: The Commission is revising Form 161 to include Restricted Use FRNs. These FRNs are created in the FCC's Commission Registration System (CORES) and are used only for Form 323, Ownership Report for Commercial Broadcast Station (OMB Control No. 3060–0010) and Form 323–E, Ownership Report for Noncommercial Educational Broadcast Station (OMB Control No. 3060–0084). Registering for a Restricted Use FRN will require the same information as other FRNs with the following differences: respondents will be required to enter a date of birth and only the last four digits of the Social Security Number.

After respondents have registered in CORES and have been issued a FCC Registration Number (FRN), they may use FCC Form 161 to update and/or change their contact information, including name, address, telephone number, email address(es), fax number, contact representative, contact representative's address, telephone number, email address, and/or fax number. Respondents may also update their registration information in CORES on-line at *https://apps.fcc.gov/cores.* The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both ''feeable'' and ''nonfeeable'' services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES System is also a means of ensuring that the Commission operates in compliance with the *Debt Collection Improvement Act of 1996.*

On November 19, 2010, the FCC adopted a *Notice of Proposed Rulemaking* (NPRM), MD Docket No. 10–234, FCC 10–192, Amendment of Part 1 of the Commission's Rules Concerning Practice and Procedure, Amendment of CORES Registration System. The NPRM proposes to eliminate some of the FCC's exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number (''TIN'') at the time of registration; require FRN holders to provide their email address(es); give FRN holders the option to identify multiple points of contact; and require FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. All remaining existing information collection requirements would stay as they are.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–29828 Filed 12–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 13, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-xxxx.

Title: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 832 respondents and 832 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Wireless licensees who are required to conduct an interference study will be required to produce the study upon request and when an interference complaint occurs.

Obligation to Respond: Mandatory. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 316, 319, 332, 403, 1452 and 1454.

Total Annual Burden: 832 hours.

Total Annual Costs: $10

Nature and Extent of Confidentiality: There is no need for confidentiality. However, applicants may request that any information supplied be withheld from public inspection, pursuant to 47 CFR 0.459 of the FCC's rules. This request must be justified pursuant to 47 CFR 0.457.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will submit this new information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the three-year clearance.

On October 26, 2015 the Federal Communications Commission released a Third Report and Order, *OET Seeks to Supplement the Incentive Auction Proceeding Record Regarding Potential Interference Between Broadcast Television and Wireless Services,* ET Docket Nos. 13–26 and 14–14, which resolved the remaining technical issues affecting the operation of 600 MHz wireless licenses and broadcast television stations in areas where they operate on the same or adjacent channels in geographic proximity. Specifically, the Commission adopted a rule requiring wireless licensees to conduct an interference study prior to deploying or operating a wireless base station within a specified distance of a broadcast television station that is co-channel or adjacent channel to their spectrum. A wireless licensee is required to provide this interference study to the Commission upon request or to the broadcast television station when there is an interference complaint.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–29829 Filed 12–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Economic Inclusion.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Economic Inclusion (''the Committee'') is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on important initiatives focused on expanding access to banking services for underserved populations. The Committee will continue to provide advice and recommendations on initiatives to expand access to banking services for underserved populations. The Committee will continue to review various issues that may include, but not be limited to, basic retail financial services such as low-cost, sustainable transaction accounts, savings accounts, small dollar lending, prepaid cards, money orders, remittances, and other services to promote asset accumulation and financial stability. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2006. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: December 8, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2016–29850 Filed 12–12–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, December 6, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Federal Register notice of previous announcement—81 FR 86714.

CHANGE IN THE MEETING: This meeting was continued on December 8, 2016.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2016–29944 Filed 12–9–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comment.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on the continuing information collection (an extension with no change) listed below in this notice.

DATES: Written comments must be submitted on or before February 13, 2017.

ADDRESSES: Address all comments to: Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC

20573, Phone: (202) 523–5800, Email: *omd@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of the information collection, or copies of any comments received, may be obtained by contacting Donna Lee at (202) 523–5800 or email at *dlee@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments received, including attachments, are part of the public record and subject to disclosure. Please do not include any confidential material or material that you consider inappropriate for public disclosure. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR part 540—Application for Certificate of Financial Responsibility/Form FMC–131.

OMB Approval Number: 3072–0012 (Expires February 28, 2017).

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. 44101–44106) require owners or charterers of passenger vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United States ports and territories to establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to indemnify passengers in the event of nonperformance of transportation. The Commission's regulations at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The information will be used by the Commission's staff to ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Affected Public Who Will Be Asked or Required to Respond: Respondents are owners, charterers, and operators of passenger vessels with 50 or more passenger berths that embark passengers from U.S. ports or territories.

Number of Annual Respondents: The Commission estimates the total number of respondents at 47 annually.

Estimated Time per Response: The time per response ranges from 0.5 to 8 hours for reporting and recordkeeping requirements contained in the regulations, and 8 hours for completing Application Form FMC–131.

Total Annual Burden: The Commission estimates the total burden at 1,359 hours per year.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–29851 Filed 12–12–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1555]

Application of the RFI/C(D) Rating System to Savings and Loan Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: The Board proposes to fully apply the same supervisory rating system to savings and loan holding companies as currently applies to bank holding companies. This proposal furthers the Board's goal of ensuring that holding companies that control depository institutions are subject to consistent standards and supervisory programs. The proposal would not apply to savings and loan holding companies engaged in significant insurance or commercial activities. These firms would instead continue to receive indicative supervisory ratings.

DATES: Comments must be received no later than February 13, 2017.

ADDRESSES: You may submit comments, identified by Docket No. OP–1555, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW.), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: T. Kirk Odegard, Assistant Director and Chief of Staff, Policy Implementation and Effectiveness, (202) 530–6225, or Karen Caplan, Manager, (202) 452–2710, Division of Banking Supervision and Regulation; Tate Wilson, Counsel, (202) 452–3696, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The Proposal
III. Regulatory Analysis

I. Background

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') transferred

responsibility for the supervision of savings and loan holding companies (SLHCs) from the Office of Thrift Supervision to the Federal Reserve.[1] Since 2011, the Board has applied its existing rating system for bank holding companies (BHCs)—the RFI/C(D) rating system (commonly referred to as the ''RFI rating system'') [2]—to SLHCs on an indicative basis as a way of providing feedback to SLHCs regarding supervisory expectations while the Federal Reserve and SLHCs each became familiar with the newly established statutory framework for supervision. Federal Reserve supervisory staff have assigned to each savings and loan holding company an ''indicative rating,'' which describes how the savings and loan holding company would be rated under the RFI rating system if applied to the company without the rating itself triggering supervisory consequences.[3]

Prior to the transfer of supervisory responsibility for SLHCs, the OTS assigned supervisory ratings for SLHCs under the CORE rating system.[4] The CORE rating system and the RFI rating system substantially overlapped. The two rating systems generally included assessments of the same set of financial and non-financial factors and provide a summary evaluation of each holding company's condition.[5] Under both systems, assigned ratings formed a basis for supervisory responses and actions, including discussions between supervisors and firm management of a holding company's condition.

The Board did not adopt the CORE rating system upon taking over supervision of SLHCs. Instead, because SLHCs and BHCs face the same risks and engage largely in the same activities, the Board sought to ensure that holding companies of depository institutions were subject to consistent standards and supervisory programs by applying the same RFI rating system to SLHCs as the Board applies to BHCs. To allow a period of adjustment for both the Federal Reserve and SLHCs, the Federal Reserve assigned RFI ratings on an indicative basis only.

II. The Proposal

Applying the RFI Rating System to SLHCs

After completing a number of supervisory cycles in which the RFI rating system has been applied to SLHCs on an indicative basis and having evaluated the information gained from that process, the Board now proposes to apply the RFI rating system to certain SLHCs on a fully implemented basis.[6] Applying the RFI rating system to both BHCs and SLHCs ensures that holding companies of depository institutions are subject to consistent standards and supervisory programs.[7] Experience with this process over the past five years indicates that the RFI rating system is an effective approach to communicating supervisory expectations to SLHCs. In proposing this application of the RFI rating system to certain SLHCs, the Board has taken into account the diverse population of SLHCs and the experience gained in assigning indicative RFI ratings to these firms.

The Board proposes to apply the RFI rating system to all SLHCs except those that are excluded from the definition of ''covered savings and loan holding company'' in section 217.2 of the Board's Regulation Q.[8] Specifically, the Board would not fully apply the RFI rating system to SLHCs that derive 50 percent or more of their total consolidated assets or total revenues to activities that are not financial in nature under section 4(k) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(k)). This proposal also would not apply to savings and loan holding companies that are insurance companies or savings and loan holding companies that hold 25 percent or more of their total consolidated assets in subsidiaries that are insurance companies. Instead, the Board would continue to assign an indicative rating under the RFI system to these SLHCs as it reviews whether a modified version of the RFI rating system or some other supervisory rating system is appropriate for these firms on a permanent basis.

Under this proposal, all components of the RFI rating system (*i.e.,* risk management, financial condition, and potential impact of the parent company and nondepository subsidiaries on subsidiary depository institution(s)) would apply to SLHCs.[9] Likewise, the depository institution rating, which generally mirrors the primary regulator's assessment of the subsidiary depository institution(s), would apply to certain SLHCs under the proposal. A numeric rating of 1 indicates the highest rating, strongest performance and practices, and least degree of supervisory concern; a numeric rating of 5 indicates the lowest rating, weakest performance, and the highest degree of supervisory concern.

The financial condition component of the RFI rating includes a subcomponent that represents an assessment of capital adequacy. Compliance with minimum regulatory capital requirements is part of a broader qualitative and quantitative assessment of an SLHC's capital adequacy. As of January 1, 2015, certain SLHCs became subject to minimum capital requirements and overall capital adequacy standards.[10] For SLHCs subject to minimum regulatory capital requirements, assessment of the SLHC's

[1] 12 U.S.C. 5412(b)(1).

[2] Under the RFI rating system, BHCs generally are assigned individual component ratings for risk management (R), financial condition (F), and impact (I) of nondepository entities on subsidiary depository institutions. The risk management component is supported by individual subcomponent ratings for board and senior management oversight; policies, procedures, and limits; risk monitoring and management and information systems; and internal controls. The financial condition rating is supported by individual subcomponent ratings for capital adequacy, asset quality, earnings, and liquidity. An additional component rating is assigned to generally reflect the condition of any depository institution subsidiaries (D), as determined by the primary supervisor(s) of those subsidiaries. An overall composite rating (C) is assigned based on an overall evaluation of a BHC's managerial and financial condition and an assessment of potential future risk to its subsidiary depository institution(s). A simplified version of the RFI rating system that includes only the risk management component and a composite rating is applied to noncomplex BHCs with assets of $1 billion or less.

[3] All SLHCs that have been inspected have received at least one indicative rating.

[4] *See* 72 FR 72442 (December 20, 2007). Under the CORE rating system, SLHCs generally were assigned individual component ratings for capital (C), organizational structure (O), risk management (R), and earnings (E), as well as a composite rating that reflected an overall assessment of the holding company as reflected by consolidated risk management and financial strength.

[5] The primary difference between the two rating systems concerned asset quality and liquidity. Under the CORE rating system, a review of asset quality was subsumed into other rating elements such as capital and earnings, it was not specifically accounted for or assessed. Similarly, liquidity was not rated separately under the CORE rating system; it was taken into account in the organizational structure and earnings assessments. The RFI rating system assigns a separate subcomponent rating for asset quality and liquidity that support the overall financial condition rating.

[6] *See* 12 U.S.C. 1467a(b) (providing for the supervision and examination of SLHCs by the Board) and 1467a(g) (authorizing the Board to issue regulations and orders it deems necessary to or appropriate to enable it to administer and carry out the purposes of section 10 of HOLA).

[7] The Board is not proposing any changes to the application of the RFI rating system to bank holding companies at this time.

[8] 12 CFR 217.2.

[9] Consistent with the approach for BHCs, when assigning a rating to an SLHC supervisory staff will take into account a company's size, complexity, and financial condition. For example, a noncomplex SLHC with total assets less than $1 billion will not be assigned all subcomponent ratings; rather, only a risk management component rating and composite rating generally will be assigned. These would equate, respectively, to the management component and composite rating under the CAMELS rating system for depository institutions, as assigned to the SLHC's subsidiary savings association by its primary regulator.

[10] *See* 78 FR 62018, 62028 (October 11, 2013) (outlining the timeframe for implementation of Regulation Q for SLHCs and others).

compliance with those requirements will be one element of a broader qualitative and quantitative assessment of capital adequacy.[11]

Noncomplex SLHCs under $1 billion will be assigned an abbreviated version of the RFI rating system consistent with the Board's practice for BHCs outlined in SR 13–21.[12] An offsite review of the SLHC will be conducted upon receipt of the lead depository institution's report of examination. The supervisory cycle will be determined by the examination frequency of the lead depository institution and the SLHC will be assigned only a risk management rating and a composite rating.

Finally, elements of the RFI rating system that are codified in the Board's *Bank Holding Company Supervision Manual*[13] and a policy letter issued by the staff of the Board's Division of Banking Supervision and Regulation will be revised if the proposal to fully apply the RFI system to certain SLHCs is finalized.[14]

Assessment of Capital Adequacy for SLHCs That Receive Indicative Ratings

For SLHCs that would continue to receive an indicative rating under the RFI rating system, the Board proposes that examiners, in the evaluation of capital adequacy of an SLHC, consider the risks inherent in the SLHC's activities and the ability of capital to absorb unanticipated losses, provide a base for growth, and support the level and composition of the parent company and subsidiaries' debt.

Supervisory Guidance for SLHCs With Less Than $10 Billion in Assets

In 2013, Board staff published several supervisory letters extending the use of the RFI rating system for and assignment of indicative ratings to SLHCs and extending the scope and frequency requirements for supervised holding companies with total consolidated assets of $10 billion or less to SLHCs. Until such time as the Board adopts a final rule on the application of the RFI rating system to SLHCs, SLHCs may refer to these letters for staff-level guidance on the use of indicative ratings.

The Board invites comment on all aspects of this proposal.

III. Regulatory Analysis

Paperwork Reduction Act

There is no collection of information required by this proposal that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would apply the same supervisory rating system to SLHCs as currently applies to bank holding companies. The RFI rating system is an effective approach to communicating supervisory expectations to SLHCs. This proposal furthers the Board's goal of ensuring that holding companies that control depository institutions are subject to consistent standards and supervisory programs.

2. *Small entities affected by the proposed rule.* Under regulations issued by the Small Business Administration, a small entity includes an SLHC with total assets of $550 million or less. As of October 31, 2016, there were approximately 157 small SLHCs. The proposed rule will not have a significant economic impact on the entities that it affects because the proposal does not impose any recordkeeping, reporting, or compliance requirements. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would not impose any recordkeeping, reporting, or compliance requirements.

4. *Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. *Significant alternatives to the proposed revisions.* The Board believes that this proposal will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to this proposal that would reduce the economic impact on small banking organizations supervised by the Board.

The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated on small entities with this proposed rule.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make this proposed rule easier to understand. For example:

- Has the Board organized the material to suit your needs? If not, how could the proposal be more clearly stated?
- Are the requirements in the proposal clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposal contain technical language or jargon that is not clear? If so, what language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes would make the proposal easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could the Board do to make the proposal easier to understand?

By order of the Board of Governors of the Federal Reserve System, December 8, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–29891 Filed 12–12–16; 8:45 am]

BILLING CODE 6210–01–P

[11] *See* Sections 4060 and 4061 of the *Bank Holding Company Supervision Manual*; Supervision and Regulation Letter 15–19 (December 18, 2015), *available at https://www.federalreserve.gov/bankinforeg/srletters/sr1519.htm*; Supervision and Regulation Letter 15–6 (April 6, 2015), *available at https://www.federalreserve.gov/bankinforeg/srletters/sr1506.htm*; Supervision and Regulation Letter 09–04 (February 24, 2009, revised December 21, 2015), *available at http://www.federalreserve.gov/boarddocs/srletters/2009/sr0904.htm.*

[12] Supervision and Regulation Letter 13–21 (December 17, 2013), *available at https://www.federalreserve.gov/bankinforeg/srletters/sr1321.htm.*

[13] *Available at http://www.federalreserve.gov/boarddocs/supmanual/supervision_bhc.htm.*

[14] *See* Supervision and Regulation Letter 04–18 (December 6, 2014), *available at http://www.federalreserve.gov/boarddocs/srletters/2004/sr0418.htm.*

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the

Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED NOVEMBER 1, 2016 THRU NOVEMBER 30, 2016

		11/01/2016
20170004	G	Sofina s.a.; BCP CC Holdings L.P.; Sofina s.a.
20170060	G	Roche Holding Ltd; Hanmi Pharmaceutical Co., Ltd.; Roche Holding Ltd
20170110	G	Wellspring Capital Partners V, L.P.; MM Hoffmaster Holdings L.P.; Wellspring Capital Partners V, L.P.
		11/02/2016
20161726	G	Berry Plastics Group, Inc.; AEP Industries Inc.; Berry Plastics Group, Inc.
20170008	G	Tech Data Corporation; Avnet, Inc.; Tech Data Corporation.
20170013	G	B&G Foods, Inc.; The Garfield Weston Charitable Foundation; B&G Foods, Inc.
20170114	G	RHI AG; Magnesita Refratarios S.A.; RHI AG.
		11/03/2016
20170104	G	Tenex Capital Partners II, L.P.; Pugh Oil Company, Inc.; Tenex Capital Partners II, L.P.
		11/04/2016
20170026	G	Francisco Partners IV, L.P.; Eric and Amy Huang Legacy Trust u/a 9/30/11; Francisco Partners IV, L.P.
20170027	G	Francisco Partners IV, L.P.; Amy B. Huang Legacy Trust u/a 2/1/12; Francisco Partners IV, L.P.
20170084	G	Equistone V FPCI; Wayzata Opportunities Fund II, L.P.; Equistone V FPCI.
20170117	G	Comvest Investment Partners V, L.P.; Lasko Group, Inc.; Comvest Investment Partners V, L.P.
20170118	G	Acrisure Investors FO, LLC; Genstar Capital Partners VI, L.P.; Acrisure Investors FO, LLC.
20170124	G	Onex Partners IV LP; Supervalu Inc.; Onex Partners IV LP.
20170125	G	Wynnchurch Capital Partners IV, L.P.; Rosboro, LLC; Wynnchurch Capital Partners IV, L.P.
20170126	G	Kayne Anderson Energy Fund VI, L.P.; RSP Permian, Inc.; Kayne Anderson Energy Fund VI, L.P.
20170127	G	Kayne Anderson Energy Fund VII, L.P.; RSP Permian, Inc.; Kayne Anderson Energy Fund VII, L.P.
20170132	G	Nationwide Mutual Insurance Company; JNF Investors LLC; Nationwide Mutual Insurance Company.
20170135	G	Carlyle Partners VI Cayman, L.P.; Total S.A.; Carlyle Partners VI Cayman, L.P.
20170138	G	ITOCHU Corporation; Empire Gen Holdings, Inc.; ITOCHU Corporation.
20170145	G	Unibel; White Knight VIII FPCI; Unibel.
		11/07/2016
20170035	G	Warburg Pincus Private Equity XII, L.P.; Ascentium Capital LLC; Warburg Pincus Private Equity XII, L.P.
20170039	G	Hanwha General Chemical Co., Ltd.; Hanwha Q Cells Korea Corp.; Hanwha General Chemical Co., Ltd.
20170071	G	Allergan plc; AstraZeneca PLC; Allergan plc.
20170115	G	Verizon Communications Inc.; AT&T Inc.; Verizon Communications Inc.
20170116	G	AT&T Inc.; Verizon Communications Inc.; AT&T Inc.
20170123	G	Novartis AG; Selexys Pharmaceuticals Corporation; Novartis AG.
20170147	G	Hainan Cihang Charitable Foundation; CIT Group Inc.; Hainan Cihang Charitable Foundation.
20170157	G	H.I.G. Middle Market LBO Fund II, L.P.; Mercury Capital, L.P.; H.I.G. Middle Market LBO Fund II, L.P.
		11/08/2016
20170085	G	Endeavour Capital Fund VII, L.P.; OFD Holdco, Inc.; Endeavour Capital Fund VII, L.P.
20170130	G	Oaktree Principal Fund VI, L.P.; SunOpta, Inc.; Oaktree Principal Fund VI, L.P.
20170142	G	AEA Investors Fund VI LP; CHS Private Equity V L.P.; AEA Investors Fund VI LP.
		11/10/2016
20161294	G	Promotora de Inversiones Mexicanas, S.A.; CEMEX S.A.B. de C.V.; Promotora de Inversiones Mexicanas, S.A.
20170152	G	Platte River Equity III, L.P.; H. J. Baker & Bro., Inc.; Platte River Equity III, LP.
		11/14/2016
20170119	G	HKW Capital Partners IV, L.P.; Xirgo Technologies, Inc.; HKW Capital Partners IV, L.P.
20170133	G	j2 Global, Inc.; Everyday Health, Inc.; j2 Global, Inc.
		11/15/2016
20160836	G	Verizon Communications Inc.; Carl C. Icahn; Verizon Communications Inc.

EARLY TERMINATIONS GRANTED NOVEMBER 1, 2016 THRU NOVEMBER 30, 2016—Continued

20170153	G	Mitsubishi Materials Corporation; Nordic Capital V, L.P.; Mitsubishi Materials Corporation.
20170154	G	CONSOL Energy Inc.; Noble Energy, Inc.; CONSOL Energy Inc.
20170158	G	Quad-C Partners VIII, L.P.; Fusion Partners, LLC; Quad-C Partners VIII, L.P.
20170160	G	Buckeye Partners, L.P.; Vitol Investment Partnership Limited; Buckeye Partners, L.P.
20170161	G	Buckeye Partners, L.P.; Vitol Holding B.V.; Buckeye Partners, L.P.
20170168	G	Quantum Energy Partners VI, LP; Freeport-McMoRan Inc.; Quantum Energy Partners VI, LP.
20170176	G	Soohyung Kim; Twin River Worldwide Holdings, Inc.; Soohyung Kim.
20170177	G	InPhi Corporation; ClariPhy Communications, Inc.; InPhi Corporation.
20170183	G	Quad-C Partners VIII, L.P.; Wells Fargo & Company; Quad-C Partners VIII, L.P.
20170190	G	Richard Webb; Kinder Morgan, Inc.; Richard Webb.
20170191	G	Galanos Investments L.P.; KPS Special Situations Fund IV, LP; Galanos Investments L.P.
		11/16/2016
20170170	G	Audax Private Equity Fund V-A, L.P.; Silver Oak Services Partners, L.P.; Audax Private Equity Fund V-A, L.P.
20170196	G	PMHC II, Inc.; Eramet, S.A.; PMHC II, Inc.
		11/17/2016
20170129	G	Amgen Inc.; Arrowhead Pharmaceuticals, Inc.; Amgen Inc.
20170164	G	Daiichi Sankyo Co., Ltd.; Inspirion Delivery Technologies LLC; Daiichi Sankyo Co., Ltd.
20170167	G	NextEra Energy, Inc.; Energy Future Holdings Corp.; NextEra Energy, Inc.
20170187	G	Thomas A. Garrett; Cerberus Partners, L.P.; Thomas A. Garrett.
20170188	G	Archrock Partners, L.P.; Archrock, Inc.; Archrock Partners, L.P.
		11/18/2016
20170097	G	CBOE Holdings, Inc.; Bats Global Markets; CBOE Holdings, Inc.
20170102	G	Joseph Mansueto; PitchBook Data, Inc.; Joseph Mansueto.
20170162	G	Constellation Brands, Inc.; Eugenie Patri Sebastien EPS, SA; Constellation Brands, Inc.
20170163	G	Constellation Brands, Inc.; Jorge Paulo Lemann; Constellation Brands, Inc.
		11/21/2016
20161824	G	Blackfriars Corp.; Saudi Basic Industries Corp.; Blackfriars Corp.
20170209	G	Odyssey Investment Partners Fund V, L.P.; HSM Tek, Inc.; Odyssey Investment Partners Fund V, L.P.
20170215	G	SG Growth Partners III, LP; Weston Presidio V, L.P.; SG Growth Partners III, LP.
20170220	G	Enviva Partners, LP; Riverstone/Carlyle Renewable and Alternative Energy Fund II,; Enviva Partners, LP.
20170225	G	Sun Hydraulics Corporation; Frank W. Murphy III; Sun Hydraulics Corporation.
20170229	G	Bain Capital Europe Fund IV, L.P.; ASF Park Acquisition LP; Bain Capital Europe Fund IV, L.P.
20170250	G	Bed Bath & Beyond Inc.; Daniel R. Randolph; Bed Bath & Beyond Inc.
		11/22/2016
20170208	G	Nestle S.A.; Aimmune Therapeutics, Inc.; Nestle S.A.
		11/23/2016
20170137	G	Henderson Group plc; Janus Capital Group Inc.; Henderson Group plc.
20170173	G	Huntington Ingalls Industries, Inc.; New Mountain Partners III, L.P.; Huntington Ingalls Industries, Inc.
20170174	G	BW NHHC Co-Invest, L.P.; Wellspring Capital Partners V, L.P.; BW NHHC Co-Invest, L.P.
20170179	G	Comcast Corporation; Racecar Holdings, LLC; Comcast Corporation.
20170180	G	Steven E. Grosser; Racecar Holdings, LLC; Steven E. Grosser.
20170181	G	Patrick J. McAdaragh; Racecar Holdings, LLC; Patrick J. McAdaragh.
20170217	G	Synopsys, Inc.; LLR Equity Partners IV, L.P.; Synopsys, Inc.
		11/28/2016
20170113	G	Micro Focus International plc; Hewlett Packard Enterprise Company; Micro Focus International plc.
20170136	G	GTCR Fund XI/A LP; DPC Holdings, LLC; GTCR Fund XI/A LP.
20170156	G	Lintec Corporation; Platinum Equity Capital Evergreen Partners, L.P.; Lintec Corporation.
20170213	G	HollyFrontier Corporation; Suncor Energy Inc.; HollyFrontier Corporation.
20170218	G	SpeedCast International Limited; Harris Corporation; SpeedCast International Limited.
20170226	G	The Kansai Electric Power Co., Inc.; Marubeni Corporation; The Kansai Electric Power Co., Inc.
20170228	G	American Midstream Partners, LP; ArcLight Energy Partners Fund V, L.P.; American Midstream Partners, LP.
20170234	G	Shangtex Holding Co. Ltd.; Dr. Henry Tan; Shangtex Holding Co. Ltd.
20170238	G	JLL Partners Fund VII, L.P.; MedPlast Holdings, Inc.; JLL Partners Fund VII, L.P.
20170239	G	Water Street Healthcare Partners III, L.P.; MedPlast Holdings, Inc.; Water Street Healthcare Partners III, L.P.
20170241	G	Genstar Capital Partners VII, L.P.; David D. Morgan; Genstar Capital Partners VII, L.P.
20170246	G	Blackstone Capital Partners VII L.P.; Team Health Holdings, Inc.; Blackstone Capital Partners VII L.P.
20170252	G	Greencore Group plc; Charlesbank Equity Fund VII, Limited Partnership; Greencore Group plc.
20170260	G	Leviton Manufacturing Co., Inc.; Allan B. Hubbard; Leviton Manufacturing Co., Inc.
20170264	G	NuStar Energy L.P.; Martin Midstream Partners L.P.; NuStar Energy L.P.
20170266	G	AP VIII DSB Holdings, L.P.; Ascension Health Alliance; AP VIII DSB Holdings, L.P.
20170268	G	Kendall Automotive Group, Inc.; Gayle and James Chalfant; Kendall Automotive Group, Inc.

EARLY TERMINATIONS GRANTED NOVEMBER 1, 2016 THRU NOVEMBER 30, 2016—Continued

20170269	G	Kendall Automotive Group, Inc.; David and Lorraine Edmark; Kendall Automotive Group, Inc.
20170271	G	Ascent Holdings, LLC; Fulcrum BioEnergy, Inc.; Ascent Holdings, LLC.
20170272	G	JBG SMITH Properties; JBG/Operating Partners, L.P.; JBG SMITH Properties.
20170280	G	Blue Star Parent, L.P.; Ansira Holdings, LLC; Blue Star Parent, L.P.
20170289	G	Antelope NewCo, Inc.; AlixPartners Holdings, LLP; Antelope NewCo, Inc.
11/30/2016		
20170159	G	The Hearst Family Trust; GTCR Fund X/A LP; The Hearst Family Trust.
20170169	G	Insight MB Parent LLC; MB Parent Holdings, LLC; Insight MB Parent LLC.
20170274	G	Quintiles IMS Holdings, Inc.; Jon C. Anderson; Quintiles IMS Holdings, Inc.
20170279	G	Calpine Corporation; NAPGS Holdco, LLC; Calpine Corporation.
20170281	G	Adobe Systems Incorporated; TubeMogul, Inc.; Adobe Systems Incorporated.
20170284	G	CENTRO ARTE SCIENZA E TECNOLOGIA S.R.L.; Nestle S. A.; CENTRO ARTE SCIENZA E TECNOLOGIA S.R.L.
20170296	G	Bain Capital Fund XI, L.P.; Blue Nile, Inc.; Bain Capital Fund XI, L.P.
20170298	G	AIPCF VI AIV Moly-Cop (Cayman), LP; Arrium Limited; AIPCF VI AIV Moly-Cop (Cayman), LP.
20170300	G	Wind Point Partners, VIII-A, L.P.; Michael J. Baab; Wind Point Partners, VIII-A, L.P.
20170306	G	AIM Marina Holdings, LLC; John D. Brewer, Jr. and Margaret S. Brewer; AIM Marina Holdings, LLC.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry Program Support Specialist, Federal Trade Commission Premerger Notification Office Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2016–29771 Filed 12–12–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–0625]

Determination of Regulatory Review Period for Purposes of Patent Extension; NUCALA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NUCALA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by February 13, 2017. 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 June 12, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–0625 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; NUCALA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any

information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of the USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product NUCALA (mepolizumab). NUCALA is indicated for add-on maintenance treatment of patients with severe asthma aged 12 years and older, and with an eosinophilic phenotype. Subsequent to this approval, the USPTO received a patent term restoration application for NUCALA (U.S. Patent No. 5,693,323) from GlaxoSmithKline LLC, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 10, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of NUCALA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for NUCALA is 6,862 days. Of this time, 6,496 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* January 22, 1997. The applicant claims January 21, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 22, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262*): November 4, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for NUCALA (BLA 125526) was initially submitted on November 4, 2014.

3. *The date the application was approved:* November 4, 2015. FDA has verified the applicant's claim that BLA 125526 was approved on November 4, 2015.

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 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). 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. To meet its burden, the petition must be timely (see **DATES**) and 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.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29838 Filed 12–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0764]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Feed Regulatory Program Standards

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 January 12, 2017.

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 0910–0760. 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, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Animal Feed Regulatory Program Standards—OMB 0910–0760—Extension

I. Background

In the United States, Federal and State Government Agencies ensure the safety of animal feed. FDA is responsible for ensuring that all food and feed moving in interstate commerce, except those under the U.S. Department of Agriculture jurisdiction, are safe, wholesome, and labeled properly. States are responsible for conducting inspections and regulatory activities that help ensure food and feed produced, processed, and distributed within their jurisdictions are safe and in compliance with State laws and regulations. States primarily perform inspections under their own regulatory authority. Some States conduct inspections of feed facilities under contract with FDA. Because jurisdictions may overlap, FDA and States collaborate and share resources to protect animal feed.

The FDA Food Safety Modernization Act passed on January 4, 2011, calls for enhanced partnerships and provides a legal mandate for developing an Integrated Food Safety System (IFSS). FDA is committed to implementing an IFSS thereby optimizing coordination of food and feed safety efforts with Federal, State, local, tribal, and territorial regulatory and public health Agencies. Model standards provide a consistent, underlying foundation that is critical for uniformity across State and Federal Agencies to ensure credibility of food and feed programs within the IFSS.

II. Significance of Feed Program Standards

The Animal Feed Regulatory Program Standards (AFRPS) provide a uniform and consistent approach to feed regulation in the United States. Implementation of the draft feed program standards is voluntary. States implementing the standards will identify and maintain program improvements that will strengthen the safety and integrity of the U.S. animal feed supply.

The feed standards are the framework that each State should use to design, manage, and improve its feed program. The standards include the following: (1) Regulatory foundation; (2) training; (3) inspection program; (4) auditing; (5) feed-related illness or death and emergency response; (6) enforcement program; (7) outreach activities; (8) budget and planning; (9) assessment and improvement; (10) laboratory services; and (11) sampling program.

Each standard has a purpose statement, requirement summary, description of program elements, projected outcomes, and a list of required documentation. When a State program voluntarily agrees to implement the feed standards, it must fully implement and maintain the individual program elements and documentation requirements in each standard in order to fully implement the standard.

The feed standards package includes forms, worksheets, and templates to help the State program assess and meet the program elements in the standard. State programs are not obligated to use the forms, worksheets, and templates provided with the feed standards. Other manual or automated forms, worksheets, and templates may be used as long as the pertinent data elements are present. Records and other documents specified in the feed standards must be maintained in good order by the State program and must be available to verify the implementation of each standard. The feed standards are not intended to address the performance appraisal processes that a State Agency may use to evaluate individual employee performance.

In the first year of implementation, the State program uses the self-assessment worksheets to determine if the requirements for each standard are fully met, partially met, or not met. The self-assessments are used to develop an improvement plan for fully implementing the requirements of the 11 standards. Second and third-year assessments will provide progress evaluation.

Although FDA plans to provide financial support to State programs that implement the feed standards, funding opportunities are contingent upon the availability of funds. Funding opportunities may be only available to State feed regulatory programs that currently have an FDA feed inspection contract. State programs receiving financial support to implement the feed standards will be audited by FDA.

III. Electronic Access

Persons with access to the Internet may submit requests for a single copy of the current feed standards from *OP-PRA@fda.hhs.gov.* Please note that due to editorial revisions and public comments, the final standards may differ from the copy you receive.

In the **Federal Register** of April 12, 2016 (81 FR 21578), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment. However, this comment did not address the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State Employee	40	1	40	3,000	120,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden has been calculated to 3,000 hours per respondent. This burden was determined by capturing the average amount of time for each respondent to assess the current state of the program and work toward implementation of each of the 11 standards contained in AFRPS. FDA recognizes that full use and implementation of the feed standards by State feed programs will occur over many years and the number of years to

fully implement the feed standards will vary among States.

Dated: December 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29839 Filed 12–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2836]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Donor Risk Assessment Questionnaire for the Food and Drug Administration/National Heart, Lung, and Blood Institute-Sponsored Transfusion-Transmissible Infections Monitoring System—Risk Factor Elicitation

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 January 12, 2017.

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 ''Donor Risk Assessment Questionnaire for the Food and Drug Administration/National Heart, Lung, and Blood Institute-sponsored Transfusion-Transmissible Infections Monitoring System—Risk Factor Elicitation.'' 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, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Donor Risk Assessment Questionnaire for FDA/National Heart, Lung, and Blood Institute (NHLBI)-sponsored Transfusion-Transmissible Infections Monitoring System (TTIMS)—Risk Factor Elicitation OMB Control Number—New

FDA intends to interview blood donors to collect risk factor information associated with testing positive for a Transfusion-Transmissible Infection (TTI). This collection of information is part of a larger initiative called TTIMS, which is a collaborative project funded by FDA, the NHLBI of the National Institutes of Health (NIH), and the Department of Health and Human Services (HHS) Office of the Assistant Secretary of Health with input from other Agencies in HHS, including the Centers for Disease Control and Prevention (CDC). FDA will use these scientific data collected through such interview-based risk factor elicitation of blood donors to monitor and help ensure the safety of the U.S. blood supply.

Previous assessments of risk factor profiles among blood donors found to be positive for human immunodeficiency virus (HIV) were funded by CDC for approximately 10 years after implementation of HIV serologic screening of blood donors in the mid-1980s; whereas studies of Hepatitis C virus (HCV) seropositive donors, funded by NIH, were conducted in the early 1990s. Information on current risk factors in blood donors as assessed using analytical study designs was next evaluated by the Transfusion-Transmitted Retrovirus and Hepatitis Virus Rates and Risk Factors Study conducted by the NHLBI Retrovirus Epidemiology Donor Study-II (REDS–II) approved under OMB control number 0925–0630. Through a risk factor questionnaire, this study elicited risk factors in blood donors who tested confirmed positive for one of four transfusion-transmissible infections: HIV, HCV, Hepatitis B virus (HBV), and Human T-cell Lymphotropic virus. The study also elicited risk factors from donors who did not have any infections (controls) and compared their responses to those of the donors with confirmed infection (cases). Results from the REDS–II study were published in 2015.

FDA issued a document entitled ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products, Guidance for Industry'' dated December 2015 (*http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM446580.pdf*) that changed the blood donor criterion for men who have sex with men (MSM) from an indefinite (permanent) deferral to a 12-month deferral since last MSM contact. The impact of this change in the deferral criteria requires a national monitoring effort as part of TTIMS to assess if the relative proportions of risk factors for infection in blood donors have changed following the adoption of the 12-month donor deferral for MSM. TTIMS will use similar procedures as the ones used in the REDS–II study to monitor and evaluate risk factors among HIV-positive donors and recently HCV or HBV infected donors as well as controls.

This study will help identify the specific risk factors for TTI and their prevalence in blood donors, and help inform FDA on the proportion of incident (new) infections among all HIV positive blood donors. Donations with incident infections have the greatest potential transmission risk because they could be missed during routine blood screening. The study will help FDA evaluate the effectiveness of screening strategies in reducing the risk of HIV transmission from at-risk donors and to evaluate if there are unexpected consequences associated with the recent change in donor deferral policy such as an increase in HIV incidence among donors. These data also will inform FDA regarding future blood donor deferral policy options to reduce the risk of HIV transmission, including the feasibility of moving from the existing time-based deferrals related to risk behaviors to alternate deferral options, such as the use of individual risk assessments, and to inform the design of potential studies to evaluate the feasibility and effectiveness of such alternative deferral options.

TTIMS will include a comprehensive interview based epidemiological study of risk factor information for viral infection-positive blood donors at the American Red Cross (ARC), Blood Systems, Inc. (BSI), New York Blood Center (NYBC), and OneBlood that will identify the current predominant risk factors and reasons for virus-positive donations. The TTIMS program establishes a new, ongoing donor hemovigilance capacity that currently does not exist in the United States. Using procedures developed by the REDS–II study, TTIMS will establish this capacity in greater than 50 percent of all blood donations collected in the country.

As part of the TTIMS project, a comprehensive hemovigilance database will be created that integrates the risk

factor information collected through donor interviews of blood donor with the resulting data from disease marker testing and blood components collected by participating organizations into a research database. Following successful initiation of the risk factor interviews, the TTIMS network is poised to be expanded to include additional blood centers and/or re-focused on other safety threats as warranted. In this way, the TTIMS program will maintain standardized, statistically and scientifically robust processes for applying hemovigilance information across blood collection organizations.

The specific objectives are to:

- Determine current behavioral risk factors associated with all HIV infections, incident HBV, and incident HCV infections in blood donors (including parenteral and sexual risks) across the participating blood collection organizations using a case-control study design.
- Determine infectious disease marker prevalence and incidence for HIV, HBV, and HCV overall and by demographic characteristics of donors in the majority of blood donations collected in the country. This will be accomplished by forming epidemiological databases consisting of harmonized operational data from ARC, BSI, NYBC, and OneBlood.
- Analyze integrated risk factor and infectious marker testing data concurrently because when taken together these may suggest that blood centers are not achieving the same degree of success in educational efforts to prevent donation by donors with risk behaviors across all demographic groups.

The respondents will be persons who donated blood in the United States and these participants will be defined as cases and controls. The estimated number of respondents is based on an overall expected participation in the risk factor survey. We estimate a case to control ratio of 1:2 (200 to 400) with a 50 percent case enrollment.

In the **Federal Register** of September 30, 2016 (81 FR 67358), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received a few comments from the public. FDA concurs with one comment that providing more information to the blood center and FDA may aid in prevention of transmission of infectious disease and is critical to the safety of the blood supply. Four comments received were not responsive to the comment request on the four specified aspects of the collection of information. None of the responses specifically commented on any of the proposed questions, nor did they request that FDA make any other changes to the Donor Risk Assessment Questionnaire. Furthermore, the responses did not provide any data or explanation that would support a change regarding the information collection requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Questionnaire/survey	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cases and controls [2]	600	1	600	0.75 (45 minutes)	450

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Cases consist of virus-positive donations, and controls represent uninfected donors.

Dated: December 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29814 Filed 12–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0508]

Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishment; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments.'' This guidance is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–D–0508 for ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product

Establishments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper 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.

Submit written requests for single copies of this guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Katherine Collins, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised guidance for industry entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments.'' This guidance is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA. We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)).

We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). Persons who owned or operated domestic manufacturing establishments engaged in the manufacture of newly deemed products prior to August 8, 2016, and continued to own or operate such establishment(s) on or after August 8, 2016, are required to register and submit product listing under section 905 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 387e) by December 31, 2016. However, FDA is announcing that it does not intend to enforce these requirements with respect to newly deemed products provided the registration and product listing submissions are received by FDA on or before June 30, 2017. Although this guidance document is immediately effective, it remains subject to comment in accordance with FDA's GGP regulation.

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) added section 905 to the FD&C Act, establishing requirements for tobacco product establishment registration and product listing. Cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco were immediately covered by FDA's tobacco product authorities in chapter IX of the FD&C Act, including section 905, when the Tobacco Control Act went into effect. As for other types of tobacco products, section 901(b) of the FD&C Act (21 U.S.C. 387a(b)) grants FDA authority to deem those products subject to chapter IX of the FD&C Act. Pursuant to that authority, on April 25, 2014, FDA issued a proposed rule seeking to deem all other products that meet the statutory definition of tobacco product, set forth in section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)) (except for accessories of those products) (79 FR 23142). After review and consideration of comments on the proposed rule, FDA published the final rule on May 10, 2016 (81 FR 28974) (''the deeming rule'') and it became effective on August 8, 2016. As a result, owners and operators of domestic establishments engaged in the manufacture, preparation, compounding, or processing of tobacco products subject to the deeming rule are now required to comply with chapter IX of the FD&C Act, including the establishment registration and product listing requirements in section 905. The guidance addresses tobacco products that were immediately covered by FDA's tobacco product authorities under chapter IX of the FD&C Act and newly deemed tobacco products.

The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in section 905 of the FD&C Act have been approved under OMB control number 0910–0650.

III. Electronic Access

Persons with access to the Internet may obtain an electronic version of the guidance at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm.*

Dated: December 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29776 Filed 12–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0001–30D]

Agency Information Collection Activities; Proposed Collection; 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, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0001, scheduled to expire on December 31, 2016.

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 January 12, 2017.

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.CollectionClearance@hhs.gov* or (202) 690–5683.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0001–30D for reference.

Information Collection Request Title: Application for waiver of the two-year foreign residence requirement of the Exchange Visitor Program.

OMB No.: 0990–0001.

Abstract: The Department of Health and Human Services, Office of Global Affairs, OGA is seeking an approval on an extension by OMB on a previously approved information collection request. The OGA program deals with both research and clinical care waivers. Applicant institutions apply to HHS to request a waiver on behalf of research scientists or foreign medical graduates to work as clinicians in HHS designated health shortage areas doing primary care in medical facilities. The instructions request a copy of Form G–28 from applicant institutions represented by legal counsel outside of the applying institution. United States Department of Justice Form G–28 ascertains that legal counsel represents both the applicant organization and the exchange visitor.

Need and Proposed Use of the Information: Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

Likely Respondents: Research scientists and research facilities.

ANNUALIZED ESTIMATE BURDEN HOUR TABLE

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Application Waiver/Supplemental A Research	HHS 426	45	1	10	450
Application Waiver/Supplemental B Clinical Care	HHS 426	35	1	10	350
Total					800

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst. Information Collection Clearance Officer.

[FR Doc. 2016–29810 Filed 12–12–16; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development (NICHD); Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 52b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 31, 2017.

Open: January 31, 2017, 8:00 a.m. to 12:15 p.m..

Agenda: The agenda will include opening remarks, administrative matters, the new Director's Report, Division of Extramural Research Report and, other business of the Council.

Closed: January 31, 2017, 1:30 p.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Della Hann, Ph.D., Director, Division of Extramural Research, *Eunice Kennedy Shriver* National Institute of

Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2314, MSC 7002, Bethesda, MD 20892, (301) 496–8535.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus.All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

In order to facilitate public attendance at the open session of Council in the main meeting room, Conference Room 6, please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation, additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS).

Dated: December 7, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29762 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Archiving and Sharing Longitudinal Data.

Date: January 19, 2017.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 7, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29765 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, International Tobacco, and Health Research and Capacity Building Program (R01).

Date: February 9, 2017.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: David G. Ransom, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W124, Rockville, MD 20892–9750, 240–276–6351, *david.ransom@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Informatics Tools for Cancer Care.

Date: February 15, 2017.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Research in Cancer Nanotechnology.

Date: February 16–17, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W260, Rockville, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Imaging Informatics Tools for Cancer Research.

Date: February 24, 2017.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 3W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244. Rockville, MD 20892–9750. 240–276–6373. *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI R03/R21 SEP–5.

Date: March 2–3, 2017.

Time: 8:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and

Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20892–9750, 240–276–7755, *byeong-chel.lee@nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group, Innovative Molecular Analysis Technologies.

Date: March 28–29, 2017.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W114, Rockville, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 7, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29763 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 26–27, 2017.

Closed: January 26, 2017, 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: January 27, 2017, 8:30 a.m. to 12:00 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 7, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29766 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Multi-Component Collaborative Aging Research.

Date: February 6, 2017.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita H. Undale, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 240–747–7825, *anita.undale@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 7, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29764 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (National Cancer Institute)

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on

proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Karla Bailey, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Bethesda, MD 20892–9760 or call non-toll-free number (240) 276–5582 or Email your request, including your address to: *karla.bailey@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NCI), 0925–0642, Revision, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This information collection activity is collecting qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This generic provides information about the National Cancer Institute's customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. It also allows feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance provides useful information but it will not yield data that can be generalized to the overall population.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated burden hours are 8,917.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Surveys	10,000	1	30/60	5,000
In-Depth Interviews (IDIs) or Small Discussion Groups	500	1	90/60	750
Focus Groups	1,000	1	90/60	1,500
Website or Software Usability Tests	5,000	1	20/60	1,667
Total	16,500	16,500		8,917

Dated: December 7, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2016–29890 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; CTEP Support Contracts Forms and Surveys (National Cancer Institute)

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Michael Montello, Pharm. D., Cancer Therapy Evaluation Program (CTEP), 9609 Medical Center Drive, MSC 9742, Rockville, MD 20850 or call non-toll-free number 240–276–6080 or Email your request, including your address to: *montellom@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of

information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: CTEP Support Contracts Forms and Surveys, 0925—NEW National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute (NCI) Cancer Therapy Evaluation Program (CTEP) and the Division of Cancer Prevention (DCP) fund an extensive national program of cancer research, sponsoring clinical trials in cancer prevention, symptom management and treatment for qualified clinical investigators. As part of this effort, CTEP and DCP oversee two support programs, the NCI Central Institutional Review Board (CIRB) and the Cancer Trial Support Unit (CTSU). The purpose of the support programs is to increase efficiency and minimizing burden. The NCI CIRB provides trial oversight satisfying the requirements of 45 CFR 45 and 21 CFR 56 for review of NCI supported studies. The CTSU provides program and systems support for regulatory document collection, membership, data management and patient enrollment. The two programs use integrated systems and processes for managing participant information and documentation of regulatory review.

To meet the responsibilities of each program, information is collected from the sites for purposes of membership, enrollment, opening of IRB approved studies, documenting IRB review, regulatory approval (for sites not using the CIRB), patient enrollment, and routing of case report forms.

Several surveys are collected to assess satisfaction and provide feedback to guide improvements with processes and technology. Other Surveys have been developed to assess health professional's interests in clinical trials.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 15,531.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
CTSU IRB/Regulatory Approval Transmittal Form	Health Care Practitioner	2,444	12	2/60	978
CTSU IRB Certification Form	Health Care Practitioner	2,444	12	10/60	4,888
Withdrawal from Protocol Participation Form	Health Care Practitioner	279	1	10/60	47
Site Addition Form	Health Care Practitioner	80	12	10/60	160
CTSU Roster Update Form	Health Care Practitioner	600	1	5/60	50
CTSU Request for Clinical Brochure	Health Care Practitioner	360	1	10/60	60
CTSU Supply Request Form	Health Care Practitioner	90	12	10/60	180
Site Initiated Data Update Form	Health Care Practitioner	2	12	10/60	4
Data Clarification Form	Health Care Practitioner	150	24	10/60	600
RTOG 0834 CTSU Data Transmittal Form	Health Care Practitioner	12	76	10/60	152
MC0845(8233) CTSU Data Transmittal	Health Care Practitioner	5	12	10/60	10
CTSU Generic Data Transmittal Form	Health Care Practitioner	5	12	10/60	10
TAILORx_PACCT1_Data Transmittal Form	Health Care Practitioner	161	96	10/60	2,576
Unsolicited Data Modification Form: Protocol: TAILORx/PACCT–1.	Health Care Practitioner	30	12	10/60	60
CTSU Patient Enrollment Transmittal Form	Health Care Practitioner	12	12	10/60	24
CTSU Transfer Form	Health Care Practitioner	360	2	10/60	120
CTSU System Access Request Form	Health Care Practitioner	180	1	20/60	60
NCI CIRB AA & DOR between the NCI CIRB and Signatory Institution.	Participants	50	1	15/60	13
NCI CIRB Signatory Enrollment Form	Participants	50	1	15/60	13
CIRB Board Member Biographical Sketch Form	Board Member	25	1	15/60	6
CIRB Board Member Contact Information Form	Board Member	25	1	10/60	4
CIRB Board Member W–9	Board Member	25	1	15/60	6
CIRB Board Member NDA	Board Member	25	1	10/60	4
CIRB Direct Deposit Form	Board Member	25	1	15/60	6
CIRB Member COI Screening Worksheet	Board Members	12	1	30/60	6
CIRB COI Screening for CIRB meetings	Board Members	72	1	15/60	18
CIRB IR Application	Health Care Practitioner	80	1	60/60	80
CIRB IR Application for Exempt Studies	Health Care Practitioner	4	1	30/60	2
CIRB Amendment Review Application	Health Care Practitioner	400	1	15/60	100
CIRB Ancillary Studies Application	Health Care Practitioner	1	1	60/60	1
CIRB Continuing Review Application	Health Care Practitioner	400	1	30/60	200
Adult IR of Cooperative Group Protocol	Board Members	65	1	180/60	195
Pediatric IR of Cooperative Group Protocol	Board Members	15	1	180/60	45
Adult Continuing Review of Cooperative Group Protocol.	Board Members	275	1	60/60	275
Pediatric Continuing Review of Cooperative Group Protocol.	Board Members	130	1	60/60	130
Adult Amendment of Cooperative Group Protocol	Board Members	40	1	120/60	80
Pediatric Amendment of Cooperative Group Protocol.	Board Members	25	1	120/60	50
Pharmacist's Review of a Cooperative Group Study.	Board Members	10	1	120/60	20
CPC Pharmacist's Review of Cooperative Group Study.	Board Members	20	1	120/60	40
Adult Expedited Amendment Review	Board Members	348	1	30/60	174

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Pediatric Expedited Amendment Review	Board Members	140	1	30/60	70
Adult Expedited Continuing Review	Board Members	140	1	30/60	70
Pediatric Expedited Continuing Review	Board Members	36	1	30/60	18
Adult Cooperative Group Response to CIRB Review.	Health Care Practitioner	30	1	60/60	30
Pediatric Cooperative Group Response to CIRB Review.	Health Care Practitioner	5	1	60/60	5
Adult Expedited Study Chair Response to Required Mod.	Board Members	40	1	15/60	10
Pediatric Expedited Study Chair Response to Required Mod.	Board Members	40	1	15/60	10
Reviewer Worksheet—Determination of UP or SCN.	Board Members	360	1	10/60	61
Reviewer Worksheet—CIRB Statistical Reviewer Form.	Board Members	100	1	60/60	100
CIRB Application for Translated Documents	Health Care Practitioner	100	1	30/60	50
Reviewer Worksheet of Translated Documents	Board Members	100	1	15/60	25
Reviewer Worksheet of Recruitment Material	Board Members	20	1	15/60	5
Reviewer Worksheet Expedited Study Closure Review.	Board Members	20	1	15/60	5
Reviewer Worksheet Expedited Review of Study Chair Response to CIRB—Required Modifications.	Board Members	5	1	30/60	3
Reviewer Worksheet of Expedited IR	Board Members	5	1	30/60	3
Reviewer Worksheet—CPC—Determination of UP or SCN.	Board Members	40	1	15/60	10
Annual Signatory Institution Worksheet About Local Context.	Health Care Practitioner	400	1	40/60	267
Annual Principal Investigator Worksheet About Local Context.	Health Care Practitioner	1,800	1	20/60	600
Study-Specific Worksheet About Local Context	Health Care Practitioner	4,800	1	20/60	1,600
Study Closure or Transfer of Study Review Responsibility Form.	Health Care Practitioner	1,680	1	15/60	420
UP or SCN Reporting Form	Health Care Practitioner	360	1	20/60	120
Change of SI PI Form	Health Care Practitioner	120	1	15/60	30
CTSU Web site Customer Satisfaction Survey	Health Care Practitioner	275	1	15/60	69
CTSU Help Desk Customer Satisfaction Survey	Health Care Practitioner	325	1	15/60	81
CTSU OPEN Survey	Health Care Practitioner	60	1	15/60	15
CIRB Customer Satisfaction Survey	Participants	600	1	15/60	150
Follow-up Survey (Communication Audit)	Participants/Board Members.	300	1	15/60	75
Web site Focus Groups, Communication Project	Participants/Board Members.	18	1	60/60	18
CIRB Board Member Annual Assessment Survey	Board Members	60	1	20/60	20
PIO Customer Satisfaction Survey	Health Care Practitioner	60	1	5/60	5
Concept Clinical Trial Survey	Health Care Practitioner	500	1	5/60	42
Prospective Clinical Trial Survey	Health Care Practitioner	1,000	1	1/60	17
Low Accrual Clinical Trial Survey	Health Care Practitioner	1,000	1	1/60	17
ETCTN PI Survey	Physician	75	1	15/60	19
ETCTN RS Survey	Health Care Practitioner	175	1	15/60	44
Totals		24,125	100,362		15,531

Dated: December 1, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2016–29767 Filed 12–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0088]

Privacy Act of 1974; Department of Homeland Security/U.S. Customs and Border Protection-007 Border Crossing Information (BCI) System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-007 Border Crossing Information (BCI) System of Records.'' This system of records allows

DHS/CBP to collect and maintain records on border crossing information for all individuals who enter, are admitted or paroled into, and (when available) exit from the United States, regardless of method or conveyance. The BCI includes certain biographic and biometric information; photographs; responses to immigration and customs inspection-related questions, certain mandatory or voluntary itinerary information provided by air, sea, bus, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing.

DHS/CBP is updating this system of records notice to provide notice that BCI categories of records include responses to immigration and customs inspection questions collected to facilitate the CBP inspection process and to add a new routine use permitting DHS/CBP to share information from this system of records with external organizations if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

This system of records notice was previously published in the **Federal Register** on January 25, 2016 (81 FR 4040). A Final Rule exempting portions of this system from certain provisions of the Privacy Act was published on March 21, 2016 (81 FR 14947) and remains in effect. DHS will include this system in its inventory of record systems.

DATES: Submit comments on or before January 12, 2017. This updated system will be effective January 12, 2017.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0088 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek (202) 344–1610, CBP Privacy Officer, U.S. Customs and Border Protection, Privacy and Diversity Office, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) proposes to update and reissue a DHS system of records titled, ''DHS/CBP–007 Border Crossing Information (BCI) System of Records.'' DHS/CBP is updating this system of records notice to provide notice that BCI categories of records include responses to immigration and customs inspection questions collected to facilitate the CBP inspection process and to add a new routine use permitting DHS/CBP to share information from this system of records with external organizations if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

DHS/CBP's priority mission is to prevent terrorists and terrorist weapons from entering the country while facilitating legitimate travel and trade. To further this mission, DHS/CBP maintains BCI about all individuals who enter, are admitted or paroled into, and (when available) exit from the United States regardless of method or conveyance. BCI includes certain biographic and biometric information; photographs; certain responses to inspection questions; certain mandatory or voluntary itinerary information provided by air, sea, bus, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing. BCI resides on the TECS (not an acronym) information technology (IT) platform.

DHS/CBP is responsible for collecting and reviewing BCI from travelers entering and departing the United States as part of DHS/CBP's overall border security and enforcement missions. All individuals crossing the border are subject to DHS/CBP inspection upon arrival in the United States. Each traveler entering the United States is required to establish his or her identity, nationality, and admissibility, as applicable, to the satisfaction of a CBP Officer during the inspection process. To manage this process, DHS/CBP creates a record of an individual's admission or parole into the United States at a particular time and port of entry. DHS/CBP also collects information about U.S. citizens and certain aliens upon departure from the United States for law enforcement purposes and to document their border crossing.

DHS is statutorily mandated to create and integrate an automated entry and exit system that records the arrival and departure of aliens (8 U.S.C. 1365a), verifies alien identities, and authenticates alien travel documents through the comparison of biometric identifiers (8 U.S.C. 1365b). Certain aliens may be required to provide biometrics (including digital fingerprint scans, palm prints, photographs, facial and iris images, or other biometric identifiers) upon arrival in or departure from the United States. The biometric data is stored in the Automated Biometric Identification System (IDENT) IT system. IDENT stores and processes biometric data (*e.g.,* digital fingerprints, palm prints, photographs, and iris scans) and links biometrics with biographic information to establish and verify identities. The IDENT system serves as the biometric repository for DHS and also stores related biographic information.

Collection of additional biometric information from individuals crossing the border (such as information regarding scars, marks, tattoos, and palm prints) aids biometric sharing between the Department of Justice (DOJ) Integrated Automated Fingerprint Identification System (IAFIS)/Next Generation Identification (NGI) and the IDENT system. The end result is enhanced access to (and in some cases acquisition of) IAFIS/NGI information by the IDENT system and its users. DHS, DOJ/FBI, and the Department of State (DOS)/Bureau of Consular Affairs entered into a Memorandum of Understanding (MOU) for Improved Information Sharing Services in 2008. The MOUs established the framework for sharing information in accordance with an agreed-upon technical solution for expanded IDENT/IAFIS/NGI interoperability, which provides access to additional data for a greater number of authorized users.

CBP collects border crossing information stored in the BCI system of records through a number of sources, for example: (1) Travel documents (*e.g.,* a foreign passport) presented by an individual at a CBP port of entry when he or she provided no advance notice of the border crossing to CBP; (2) carriers that submit information in advance of travel through the Advance Passenger Information System (APIS) (see DHS/

CBP–005 Advance Passenger Information System (APIS) SORN, 80 FR 13407, (March 13, 2015)); (3) information stored in the Global Enrollment System (GES) (see DHS/CBP–002 Global Enrollment System (GES) SORN, 78 FR 3441, (January 16, 2013)) as part of a trusted or registered traveler program; (4) written or oral responses to immigration and customs inspection questions provided by travelers to facilitate the inspection process; (5) cameras posted in pre-screening and screening areas that take photos in support of the inspection process; (6) non-federal governmental authorities that issued valid travel documents approved by the Secretary of DHS (*e.g.,* an Enhanced Driver's License (EDL)); (7) another federal agency that issued a valid travel document (*e.g.,* data from a DOS visa, passport including passport card, or Border Crossing Card); or (8) the Canada Border Services Agency (CBSA) pursuant to the Beyond the Border Entry/Exit Program. When a traveler applies to enter, enters, is admitted to, paroled into, or departs from the United States, his or her biographical information, photograph (when available), and crossing details (time and location) are maintained in accordance with the DHS/CBP–007 Border Crossing Information SORN.

DHS/CBP is updating this system of records notice, last published January 25, 2016 (81 FR 4040), to modify categories of records to include responses to certain CBP inspection questions collected to facilitate the inspection process and to add a new routine use permitting DHS/CBP to share information from this system of records with external organizations if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. DHS/CBP collects traveler responses to certain CBP inspection questions via the Customs Declaration Form 6059B. This form is stored by arrival date or flight number at the various ports of entry. DHS/CBP has now deployed the Automated Passport Control Kiosk and the Mobile Passport Control mobile application, both of which permit travelers to submit responses to certain inspection-related questions electronically. The responses are stored by DHS/CBP and are now retrievable by unique identifier, therefore warranting an expansion of the BCI SORN to include these responses although DHS/CBP has collected responses to inspection questions since inception.

With this SORN update, DHS is also adding a new Routine Use Q, which permits DHS/CBP to share information with an appropriate federal, state, local, tribal, foreign, or international agency if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request. DHS/CBP is adding this new routine use to share certain border crossing information with external organizations in the course of employee or applicant suitability screening (*e.g.,* unreported foreign travel for individuals who hold sensitive security positions).

Consistent with DHS's information sharing mission, information stored in the DHS/CBP–007 BCI SORN may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions.

The exemptions for the existing system of records notice published January 25, 2016 (81 FR 4040), continue to apply for this updated system of records for those categories of records listed in the previous System of Records Notice. A Final Rule exempting portions of this system from certain provisions of the Privacy Act was published on March 21, 2016 (81 FR 14947), and remains in effect. Furthermore, to the extent certain categories of records are ingested from other systems, the exemptions applicable to the source systems will remain in effect.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the Federal Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/CBP–007 Border Crossing Information (BCI) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-007.

SYSTEM NAME:

DHS/CBP–007 Border Crossing Information (BCI).

SECURITY CLASSIFICATION:

Unclassified, Sensitive, For Official Use Only (FOUO), and Law Enforcement-Sensitive (LES). The data may be retained on classified networks, but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

DHS/CBP currently maintains records in information technology (IT) systems at DHS/CBP Headquarters in Washington, DC and at field offices. Computer terminals are located at customhouses, border ports of entry, airport inspection facilities under the jurisdiction of DHS/CBP, and other locations at which DHS/CBP authorized personnel may be posted to facilitate DHS's mission. Terminals may also be located at appropriate facilities for other participating government agencies. Records are replicated from the operational IT system and maintained on DHS unclassified and classified networks.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with records stored in BCI include U.S. citizens, lawful permanent residents (LPR), and immigrant and non-immigrant aliens who lawfully cross the U.S. border by air, land, or sea, regardless of method of transportation or conveyance.

CATEGORIES OF RECORDS IN THE SYSTEM:

DHS/CBP collects and stores the following records in the BCI system as border crossing information:

- Full name (last, first, and, if available, middle);
- Date of birth;

- Gender;
- Travel document type and number (*e.g.,* passport information, permanent resident card, Trusted Traveler Program card);
- Issuing country or entity and expiration date;
- Photograph (when available);
- Country of citizenship;
- Tattoos;
- Scars;
- Marks;
- Palm prints;
- Digital fingerprints;
- Digital iris scans;
- Radio Frequency Identification (RFID) tag number(s) (if land or sea border crossing);
- Date and time of crossing;
- Lane for clearance processing;
- Location of crossing;
- Responses to certain CBP inspection-related questions;
- Secondary Examination Status; and
- For land border crossings only, license plate number or Vehicle Identification Number (VIN) (if no plate exists).

CBP maintains in BCI information derived from an associated APIS transmission (when applicable), as well as any results of APIS information compared against CBP or partner data, which may include:

- Full name (last, first, and, if available, middle);
- Date of birth;
- Gender;
- Country of citizenship;
- Passport/alien registration number and country of issuance;
- Passport expiration date;
- Country of residence;
- Status on board the aircraft;
- Travel document type;
- U.S. destination address (for all private aircraft passengers and crew, and commercial air, rail, bus, and vessel passengers except for U.S. Citizens, LPRs, crew, and those in transit);
- Place of birth and address of permanent residence (commercial flight crew only);
- Pilot certificate number and country of issuance (flight crew only, if applicable);
- Passenger Name Record (PNR) locator number;
- Primary inspection lane;
- ID inspector;
- Records containing the results of comparisons of individuals to information maintained in CBP's law enforcement databases as well as information from the Terrorist Screening Database (TSDB);
- Information on individuals with outstanding wants or warrants; and
- Information from other government agencies regarding high risk parties.

CBP collects records under the Entry/Exit Program with Canada, such as border crossing data from the Canada Border Services Agency (CBSA), including:

- Full name (last, first, and if available, middle);
- Date of Birth;
- Nationality (citizenship);
- Gender;
- Document Type;
- Document Number;
- Document Country of Issuance;
- Port of entry location (Port code);
- Date of entry; and
- Time of entry.

In addition, air and sea carriers or operators covered by the APIS rules and rail and bus carriers (to the extent voluntarily applicable) also transmit or provide the following information to CBP for retention in BCI:

- Airline carrier code;
- Flight number;
- Vessel name;
- Vessel country of registry/flag;
- International Maritime Organization number or other official number of the vessel;
- Voyage number;
- Date of arrival/departure;
- Foreign airport/port where the passengers and crew members began their air/sea transportation to the United States;
- For passengers and crew members destined for the United States:
  - The location where the passengers and crew members will undergo customs and immigration clearance by CBP.
- For passengers and crew members who are transiting through (and crew on flights over flying) the United States and not clearing CBP:
  - The foreign airport/port of ultimate destination; and
  - Status on board (whether an individual is crew or non-crew).
- For passengers and crew departing the United States:
  - Final foreign airport/port of arrival.

Other information also stored in this system of records includes:

- Aircraft registration number provided by pilots of private aircraft;
- Type of aircraft;
- Call sign (if available);
- CBP issued decal number (if available);
- Place of last departure (*e.g.,* ICAO airport code, when available);
- Date and time of aircraft arrival;
- Estimated time and location of crossing U.S. border or coastline;
- Name of intended airport of first landing, if applicable;
- Owner or lessee name (first, last, and middle, if available, or business entity name);
- Owner or lessee contact information (address, city, state, zip code, country, telephone number, fax number, and email address, pilot, or private aircraft pilot name);
- Pilot information (license number, street address (number and street, city state, zip code, country), telephone number, fax number, and email address);
- Pilot license country of issuance;
- Operator name (for individuals: Last, first, and middle, if available; or name of business entity, if available);
- Operator street address (number and street, city, state, zip code, country, telephone number, fax number, and email address);
- Aircraft color(s);
- Complete itinerary (foreign airport landings within 24 hours prior to landing in the United States);
- 24-hour emergency point of contact information (*e.g.,* broker, dispatcher, repair shop, or other third party who is knowledgeable about this particular flight):
  - Full name (last, first, and middle (if available)) and telephone number; and
- Incident to the transmission of required information via eAPIS (for general aviation itineraries, pilot, and passenger manifests), records will also incorporate the pilot's email address.

To the extent private aircraft operators and carriers may transmit APIS, similar information may also be recorded in BCI by CBP with regard to such travel. CBP also collects the license plate number of the conveyance (or VIN number when no plate exists) in the land border environment for both arrival and departure (when departure information is available).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for BCI is provided by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173, 116 Stat. 543 (2002)); the Aviation and Transportation Security Act of 2001 (Pub. L. 107–71, 115 Stat. 597); the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 118 Stat. 3638 (2004)); the Immigration and Nationality Act, *as amended,* (8 U.S.C. 1185, 1354, 1365a and 1365b); and the Tariff Act of 1930, *as amended,* (19 U.S.C. 1322–1683g, including 19 U.S.C. 66, 1433, 1454, 1485, 1624 and 2071).

PURPOSE(S):

DHS/CBP collects and maintains this information to vet and inspect persons arriving in or departing from the United States; to determine identity, citizenship, and admissibility; and to identify persons who: (1) may be (or are

suspected of being) a terrorist or having affiliations to terrorist organizations; (2) have active warrants for criminal activity; (3) are currently inadmissible or have been previously removed from the United States; or (4) have been otherwise identified as potential security risks or raise a law enforcement concern. For immigrant and non-immigrant aliens, the information is also collected and maintained to ensure information related to a particular border crossing is available for providing any applicable benefits related to immigration or other enforcement purposes. Lastly, DHS/CBP maintains information in BCI to retain a historical record of persons crossing the border to facilitate law enforcement, counterterrorism, and benefits processing.

DHS/CBP maintains a replica of some or all of the data in the operating system on DHS unclassified and classified networks to allow for analysis and vetting consistent with the above stated purposes and this published notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate federal, state, tribal, local, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, when DHS believes the information would assist enforcement of applicable civil or criminal laws.

I. To the CBSA for law enforcement and immigration purposes, as well as to facilitate cross-border travel when an individual enters the United States from Canada.

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS reasonably believes there to be a threat (or potential threat) to national or international security for which the information may be relevant in countering the threat (or potential threat).

K. To a federal, state, tribal, or local agency, other appropriate entity or individual, or foreign governments, in order to provide relevant information related to intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, E.O., or other applicable national security directive.

L. To an organization or individual in either the public or private sector (foreign or domestic) when there is a reason to believe that the recipient is (or could become) the target of a particular terrorist activity or conspiracy, or when the information is relevant and necessary to the protection of life or property.

M. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purposes of protecting the vital interests of the data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease, to combat other significant public health threats, or to provide appropriate notice of any identified health threat or risk.

N. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings.

O. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation.

P. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS is aware of a need to use relevant data for purposes of testing new technology.

Q. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the

information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

R. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/CBP stores records in this system electronically in the operational IT system, including on DHS unclassified and classified networks, or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

DHS/CBP retrieves records by name or other personal identifiers listed in the categories of records, above.

SAFEGUARDS:

DHS/CBP safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is being stored. DHS/CBP limits access to BCI to those individuals who have a need to know the information for the performance of their official duties and who also have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

DHS/CBP is working with NARA to develop the appropriate retention schedule based on the information below. For persons DHS/CBP determines to be U.S. citizens and LPRs, information in BCI that is related to a particular border crossing is maintained for 15 years from the date when the traveler entered, was admitted to or paroled into, or departed the United States, at which time it is deleted from BCI. For non-immigrant aliens, the information will be maintained for 75 years from the date of admission or parole into or departure from the United States in order to ensure that the information related to a particular border crossing is available for providing any applicable benefits related to immigration or for other law enforcement purposes.

Information related to border crossings prior to a change in status will follow the 75 year retention period for non-immigrant aliens who become U.S. citizens or LPRs following a border crossing that leads to the creation of a record in BCI. All information regarding border crossing by such persons following their change in status will follow the 15 year retention period applicable to U.S. citizens and LPRs. For all travelers, however, BCI records linked to active law enforcement lookout records, DHS/CBP matches to enforcement activities, or investigations or cases remain accessible for the life of the primary records of the law enforcement activities to which the BCI records may relate, to the extent retention for such purposes exceeds the normal retention period for such data in BCI.

Records replicated on the unclassified and classified networks for analysis and vetting will follow the same retention schedule.

SYSTEM MANAGER AND ADDRESS:

Director, Traveler Entry Programs, U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

DHS/CBP allows persons (including foreign nationals) to seek administrative access under the Privacy Act to information maintained in BCI. However, the Secretary of DHS exempted portions of this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. Nonetheless, DHS/CBP will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DHS Chief Freedom of Information Act (FOIA) Officer or CBP FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one Component maintains Privacy Act records that concern him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, 245 Murray Lane SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. Although no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which Component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS Component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, CBP may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

In processing requests for access to information in this system, CBP will review the records in the operational system and coordinate with DHS to address access to records on the DHS unclassified and classified networks.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

DHS/CBP collects information from individuals who arrive in, depart from,

or transit through the United States. This system also collects information from carriers that operate vessels, vehicles (including buses), aircraft, or trains that enter or exit the United States, including private aircraft operators. Lastly, BCI receives border crossing information from CBSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information maintained in the system that is collected from a person at the time of crossing and submitted by that person's air, sea, bus, or rail carriers if that person, or his or her agent, seeks access or amendment of such information.

The Privacy Act, however, requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement activities. The Secretary of DHS, pursuant to 5 U.S.C. 552a(j)(2), exempted this system from the following provisions of the Privacy Act: Sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, *as amended,* as is necessary and appropriate to protect this information. Further, DHS has exempted sec. (c)(3) of the Privacy Act of 1974, *as amended,* pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Additionally, this system contains records or information recompiled from or created from information contained in other systems of records that are exempt from certain provision of the Privacy Act. This system also contains accountings of disclosures made with respect to information maintained in the system. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2) and (k)(2), DHS will also claim the original exemptions for these records or information from subsecs. (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, *as amended,* as necessary and appropriate to protect such information.

Dated: December 8, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–29898 Filed 12–12–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: TSA Canine Training Center Adoption Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves gathering information from individuals who wish to adopt a TSA canine through the TSA Canine Training Center (CTC) Adoption Program.

DATES: Send your comments by February 13, 2017.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose

The TSA Canine Program is a Congressionally-mandated program that operates pursuant to section 110(e)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (115 Stat. 597, Nov. 19, 2001); the Homeland Security Act of 2002, Public Law 107–296 (116 Stat. 2135, Nov. 25, 2002); and the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53 (121 Stat. 266, Aug. 3, 2007). The program is a partnership between TSA; aviation, mass transit, and maritime sectors; and State and local law enforcement.

The TSA Canine Program developed the TSA CTC to train and deploy explosive detection canine teams to local, State, and Federal agencies in support of daily activities that protect the transportation domain. Canine teams consist of transportation security inspectors, or local/state law enforcement officers, paired with explosives detection canines. These canines are trained on a variety of explosives based on intelligence data and emerging threats. Canine teams are deployed after successfully undergoing a 10- or 12-week training program. Approximately 83 percent of canines graduate from the training program. These canines are continually assessed to ensure they demonstrate operational proficiency in their environment.

Currently, the canine attrition rate is between 15–18 percent. This arises from canines who do not graduate from the training program and those who successfully graduate but are later assessed as not performing at operational proficiency. TSA CTC typically repurposes 42 percent of the canines eliminated from the program to other Federal, State and local law enforcement agencies; however, the remainder may be placed for adoption. TSA has created the TSA CTC Adoption Program to find suitable individuals or families to adopt the canines and to provide good homes. Individuals seeking to adopt a TSA canine must complete the TSA CTC Adoption Application.

Description of Data Collection

The TSA CTC Adoption Application is an online application that collects personal information from the public to determine their suitability to adopt a

TSA canine. TSA will use the information collected to evaluate the individual according to the CTC program guidelines. The collection includes information about the individual's household, personal references, and current pet and veterinarian information. In addition, TSA will collect the individual's agreement to transport the canine home from TSA CTC in San Antonio, Texas, and to provide any necessary medical care, including, but not limited to, heartworm and flea preventives, and annual vaccinations, for the duration of the canine's life. TSA will also collect an attestation that all information submitted is true.

TSA estimates that annually 300 individuals will complete the adoption application and that it will take approximately 10 minutes or 0.1666 hours. This will give an estimated annual time burden to the public of 50 hours.

Use of Results

TSA CTC Adoption Program will use the information to assess the adoption applicant's suitability for placement of a TSA canine who has participated in the TSA CTC explosives detection training.

Dated: December 8, 2016.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–29878 Filed 12–12–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5911–N–03]

60-Day Notice of Proposed Information Collection: Comment Request Implementation of the Housing for Older Persons Act of 1995 (HOPA)

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement established under the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. HUD is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* February 13, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: Deborah T. Ambers, Equal Opportunity Specialist, Enforcement Support Division, Office of Enforcement, Department of Housing and Urban Development, 451 7th Street SW., Room 5208, Washington, DC 20410–2000, or the toll-free number for the Federal Relay Service at: 1–(800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Lynn M. Grosso, Director, Office of Enforcement, Department of Housing and Urban Development, 451 7th Street SW., Room 5226; Washington, DC 20410–2000; telephone (202) 402–5361 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at: 1-(800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD is submitting this proposed information collection requirement to the OMB for review, as required under the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

This notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of HUD's program functions; (2) Evaluate the accuracy of HUD's assessment of the paperwork burden that may result from the proposed information collection; (3) Enhance the quality, utility, and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Implementation of the Housing for Older Persons Act of 1995 (HOPA).

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0046.

Description of the need for the information and proposed use: The Fair Housing Act [42 U.S.C. 3601 *et seq.*], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under § 3607(b)(2) of the Act, Congress exempted three (3) categories of ''*housing for older persons*'' from liability for familial status discrimination: (1) Housing provided under any State or Federal program which the Secretary of HUD determines is ''*specifically designed and operated to assist elderly persons (as defined in the State or Federal program*)''; (2) housing ''*intended for, and solely occupied by persons 62 years of age or older*''*;* and (3) housing ''*intended and operated for occupancy by at least one person 55 years of age or older per unit* ['55 or older' housing].'' In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Pub. L. 104–76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the ''55 or older'' housing exemption provided under § 3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer ''*significant facilities and services specifically designed to meet the physical or social needs of older persons.*'' In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *at least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age or older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with ''*rules issued by the Secretary for verification of occupancy, which shall . . . provide for* [age] *verification by reliable surveys and affidavits.*''

The HOPA did not significantly increase the record-keeping burden for the ''55 or older'' housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, in the course of a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the ''55 or older'' housing exemption as of the date of the alleged Fair Housing Act violation.

The HOPA information collection requirements are necessary to demonstrate a housing provider's eligibility to claim the ''55 or older'' housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units situated in qualified senior housing facilities or

communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a ''55 or older'' housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a ''55 or older'' housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's ''*80 percent occupancy*'' requirement, and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions, and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD's Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: The HOPA information collection requirements are the responsibility of the individual housing facility or community that claims eligibility for the HOPA's ''55 or older'' housing exemption. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event, and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours.

Status of the proposed information collection: Extension of a currently approved information collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 2, 2016.

Timothy M. Smyth,

Deputy Assistant Secretary for Enforcement and Programs.

[FR Doc. 2016–29754 Filed 12–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6000–FA–21]

Announcement of Funding Awards; Fair Housing Initiatives Program Fiscal Year 2016

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, the Department of Housing and Urban Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the Notices of Funding Availability (NOFAs) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2016. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5230, Washington, DC 20410. Telephone number (202) 402–7095 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) provides the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This

program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

On May 4, 2016, the Department posted three FY 2016 NOFAs, which announced the availability of approximately $38,300,000 to be utilized for FHIP projects and activities. Funding availability for discretionary grants for the FHIP NOFAs included: The Private Enforcement Initiative (PEI) ($30,350,000), the Education and Outreach Initiative (EOI) ($7,450,000), and the Fair Housing Organizations Initiative (FHOI) ($500,000). This Notice thereby announces grant awards for the FY 2016 PEI, EOI and FHOI FHIP NOFAs.

For the FY 2016, the Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2016 NOFAs. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). The Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program are 14.416, 14.417 and 14.418.

Dated: November 23, 2016.

Gustavo Velasquez,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A—FY2016 Fair Housing Initiatives Program Awards

Applicant name	Contact	Region	Award amt.
Education and Outreach Initiative—General Component			
Champlain Valley Office of Economic Opportunity, Inc., 255 South Champlain Street, Suite 9, Burlington, VT 05401.	Ted Wimpey, 802–660–3456	1	$124,999.00
Connecticut Fair Housing Center, Inc., 221 Main Street, Hartford, CT 06106	Erin Kemple, 860–247–4400	1	125,000.00
Fair Housing Center of Greater Boston, 100 Terrace Street, Boston, MA 02120 ..	Robert Terrell, 617–427–9740 ..	1	124,999.98
HAP, Inc., 322 Main Street, Springfield, MA 01105	Marcus Williams, 413–233–1732.	1	125,000.00
Southcoast Fair Housing, Inc., 721 County Street, New Bedford, MA 02740	Kristina da Fonseca, 774–473–8333.	1	125,000.00
Suffolk University, 8 Ashburton Place, Boston, MA 02108	Jamie Langowski, 617–573–8778.	1	123,778.00
Brooklyn Legal Services Corporation A, 260 Broadway, Brooklyn, NY 11211	Gloria Ramon, 718–487–2328 ..	2	125,000.00
Chautauqua Opportunities, Inc., 17 West Courtney Street, Dunkirk, NY 14048	William Vogt, 716–661–9430	2	125,000.00
Citizen Action of New Jersey, 744 Broad Street, Newark, NJ 07102	Leila Amirhamzeh, 973–643–8800.	2	125,000.00
CNY Fair Housing, Inc., 731 James Street, Suite 200, Syracuse, NY 13203	Sally Santangelo, 315–471–0420.	2	125,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	125,000.00
Equal Rights Center, 11 Dupont Circle NW., Washington, DC 20036	Kate Scott, 202–370–3220	3	125,000.00
Hampton Roads Community, Action Program, 2410 Wickham Avenue, Newport News, VA 23607.	Carl Shirley, 757–247–0379	3	65,271.95
Housing Counseling Services, 2410 17th Street NW., Washington, DC 20009	Marian Siegel, 202–667–7006 ..	3	125,000.00
Housing Opportunities Made Equal of Virginia, Inc., 626 E. Broad Street, Suite 400, Richmond, VA 23219.	Andrew Haugh, 804–237–7542	3	125,000.00
National Community Reinvestment Coalition, Inc., 727 15th Street NW., Suite 900, Washington, DC 20005.	Samira Cook Gaines, 202–628–8866.	3	124,999.06
Southwestern Pennsylvania Legal Services, Inc., 10 West Cherry Avenue, Washington, PA 15301.	Brian Gorman, 724–225–6170 ..	3	125,000.00
Central Alabama Fair Housing Center, 2867 Zelda Road, Montgomery, AL 36106	Faith Cooper, 334–263–4663 ...	4	124,979.00
Corporacion de Desarrollo Economico, De Ceiba, 555 Julian Rivera Street, Ceiba, PR 00735.	Olga Roche, 787–885–3020	4	87,177.00
Greenville County Human Relations Commission, 301 University Ridge, Suite 1600, Greenville, SC 29601.	Yvonne Duckett, 864–467–7095	4	122,090.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944	4	125,000.00
Mississippi Center for Justice, 5 Old River Place, Jackson, MS 39202	John Jopling, 228–435–7284	4	125,000.00
Central Ohio Fair Housing Association, Inc., 605 N. High Street, #V57, Columbus, OH 43215.	Jim McCarthy, 614–344–4663 ..	5	125,000.00
Fair Housing Center of Central Indiana, Inc., 615 N. Alabama Street, Suite 426, Indianapolis, IN 46204.	Amy Nelson, 317–644–0673	5	87,513.00
Fair Housing Center of Southwest Michigan, 405 W. Michigan, Kalamazoo, MI 49007.	Robert Ellis, 269–276–9100	5	125,000.00
Fair Housing Center of West Michigan, 20 Hall Street SE., Grand Rapids, MI 49507.	Nancy Haynes, 616–451–2980	5	125,000.00
Fair Housing Contact Service, Inc., 441 Wolf Ledges Parkway, Suite 200, Akron, OH 44311.	Tamala Skipper, 330–376–6191	5	125,000.00
Fair Housing Opportunities, Inc., dba, Fair Housing Center, 432 N. Superior Street, Toledo, OH 43606.	Michael Fehlen, 419–243–6163	5	125,000.00
Fair Housing Resource Center, Inc., 1100 Mentor Avenue, Painesville, OH 44077.	Patricia Kidd, 440–392–0147	5	125,000.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc., 2400 Reading Road, Suite 118, Cincinnati, OH 45202.	Jeniece Jones, 513–977–2620	5	125,000.00
John Marshall Law School, 315 S. Plymouth Court, Chicago, IL 60604	Michael Seng, 312–987–2397 ..	5	124,972.75

Applicant name	Contact	Region	Award amt.
Miami Valley Fair Housing Center, Inc., 505 Riverside Drive, Dayton, OH 45405	Jim McCarthy, 937–223–6035 ..	5	125,000.00
Ohio State Legal Services Association, 555 Buttles Avenue, Columbus, OH 43215.	Stephanie Harris, 614–824–2601.	5	125,000.00
Open Communities, 614 Lincoln Avenue, Winnetka, IL 60093	David Luna, 847–501–5760	5	95,110.54
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430.	John Petruszak, 708–957–4674	5	125,000.00
City of Garland, 210 Carver Street, 102A, Garland, TX 75040	Jose Alvardo, 972–205–3316 ...	6	125,000.00
Greater New Orleans Fair Housing Action Center, Inc., 404 South Jefferson Davis Parkway, New Orleans, LA 70119.	Cashauna Hill, 504–208–5916 ..	6	125,000.00
Missouri Commission on Human Rights, 315 W. Truman Blvd., Jefferson City, MO 65102.	Alisa Warren, 314–340–4717 ...	7	124,989.00
Denver Metro Fair Housing Center, 3280 Downing Street, Denver, CO 80205	Arturo Alvarado, 720–279–4291	8	124,999.72
California Rural Legal Assistance, Inc., 2201 Broadway, Suite 815, Oakland, CA 94105.	Susan Podesta, 530–742–5191	9	125,000.00
Mental Health Advocacy Services, Inc., 3255 Wilshire Blvd., Suite 902, Los Angeles, CA 90010.	James Preis, 213–389–2077	9	125,000.00
Orange County Fair Housing Council, Inc., 1515 Brookhollow Drive, Santa Ana, CA 92705.	David Levy, 714–569–0823	9	125,000.00
Project Sentinel Inc., 1490 Camino Real, Santa Clara, CA 95050	Ann Marquart, 408–470–3739 ..	9	125,000.00
Southwest Fair Housing Council, 2030 E. Broadway Blvd., Suite 101, Tucson, AZ 85719.	Jay Young, 520–798–1568	9	124,231.00
Alaska Legal Services Corporation, 1016 W. 6th Avenue, Suite 200, Anchorage, AK 99501.	Nikole Nelson, 907–222–4508 ..	10	125,000.00
Fair Housing Center of Washington, 1517 South Fawcett, Suite 250, Tacoma, WA 98302.	Lauren Walker Lee, 253–274–9523.	10	125,000.00
Fair Housing Council of Oregon, 1221 SW., Yamhill Street, Suite 305, Portland, OR 97204.	Allan Lazo, 503–223–8197	10	125,000.00
Intermountain Fair Housing Council, Inc., 4696 W. Overland Road, Boise, ID 83705.	Zoe Ann Olson, 208–383–0695	10	119,890.00
Northwest Fair Housing Alliance, 35 W. Main, Spokane, WA 99201	Marley Hochendoner, 509–209–2667.	10	125,000.00
Education and Outreach Initiative—National Media Campaign Component			
National Fair Housing Alliance, 1101 Vermont Avenue NW., Suite 710, Washington, DC 20005.	Catherine Cloud, 202–898–1661.	3	1,249,997.00
Education and Outreach Initiative—Tester Coordinator Training Component			
Metropolitan Milwaukee Fair Housing Council, Inc. 759 North Milwaukee Street, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	249,938.00
Fair Housing Organizations Initiative—Continuing Development General Component			
Reinvestment Fund, 1700 Market Street, Philadelphia, PA 19103	Ira Goldstein, 215–547–5827	3	249,809.00
Mississippi Center for Justice, 5 Old River Place, Jackson, MS 39202	John Jopling, 228–435–7284	4	86,473.00
High Plains Fair Housing Center, 1405 1st Avenue, North Grand Forks, ND 58203.	Michelle Rydz, 701–335–9244 ..	8	163,718.00
Private Enforcement Initiative/Lending Component.			
Westchester Residential Opportunities, Inc. 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	325,000.00
National Fair Housing Alliance, 1101 Vermont Avenue NW., Suite 710, Washington, DC 20005.	Catherine Cloud, 202–898–1661.	3	324,999.00
Mid-Minnesota Legal Assistance, 430 First Avenue, North Suite 300, Minneapolis, MN 55401.	Lisa Cohen, 612–746–3770	5	325,000.00
Private Enforcement Initiative/Multi-Year Component			
Community Legal Aid, Inc., 405 Main Street, Worcester, MA 01608	Faye Rachlin, 508–425–2794 ...	1	300,000.00
Connecticut Fair Housing Center, Inc., 221 Main Street, Hartford, CT 06106	Erin Kemple, 860–247–4400	1	300,000.00
Fair Housing Center of Greater Boston, 100 Terrance Street, Boston, MA 02120	Robert Terrell, 617–427–9740 ..	1	300,000.00
Massachusetts Fair Housing Center, Inc., 57 Suffolk Street, Holyoke, MA 01040	Meris Bergquist, 413–539–9796	1	300,000.00
New Hampshire Legal Assistance, 117 North State Street, Concord, NH 03301 ..	Christine Wellington, 603–223–9750.	1	300,000.00
Pine Tree Legal Assistance, 88 Federal Street, P.O. Box 547, Portland, ME 04112.	Helen Meyer, 207–774–4753	1	300,000.00
SouthCoast Fair Housing, Inc., 721 County Street, New Bedford, MA 02740	Kristina da Fonseca, 774–473–8333.	1	300,000.00
Suffolk University, 8 Ashburton Place, Boston, MA 02108	Jamie Langowski, 617–725–4145.	1	300,000.00
Vermont Legal Aid, Inc., 264 North Winooski Avenue, Burlington, VT 05402	Rachel Batterson, 802–863–5620.	1	300,000.00

Applicant name	Contact	Region	Award amt.
Brooklyn Legal Services (formerly South Brooklyn Legal Services), 105 Court Street, Brooklyn, NY 11201.	Meghan Faux, 718–246–3276 ..	2	300,000.00
Brooklyn Legal Services Corporation, A 260 Broadway, Brooklyn, NY 11211	Gloria Ramon, 718–487–2328 ..	2	300,000.00
CNY Fair Housing, Inc., 731 James Street, Suite 200, Syracuse, NY 13203	Sally Santangelo, 315–471–0420.	2	300,000.00
Fair Housing Council of Northern New Jersey, 131 Main Street, Suite 140, Hackensack, NJ 07601.	Lee Porter, 201–489–3552	2	300,000.00
Fair Housing Justice Center, Inc., 5 Hanover Square, 17th Floor, New York, NY 10004.	Fred Freiberg, 212–400–8201 ..	2	300,000.00
Housing Opportunities Made Equal Inc., 1542 Main Street, 3rd Floor, Buffalo, NY 14209.	Scott Gehl, 716–854–1400	2	300,000.00
Legal Assistance of Western NY, 1 West Main Street, Suite 400, Rochester, NY 14614.	Lori O'Brien, 585–295–5610	2	300,000.00
Long Island Housing Services, Inc., 640 Johnson Avenue, Suite 8, Bohemia, NY 11716.	Michelle Santantonio, 631–567–5111.	2	300,000.00
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507.	2	300,000.00
Baltimore Neighborhoods, Inc., 2530 N. Charles Street, Baltimore, MD 21218	Barbara Wilson, 410–243–4468	3	300,000.00
Community Legal Aid Society, Inc., 100 W. 10th Street, Suite 801, Wilmington, DE 19801.	William Dunne, 302–575–0660	3	300,000.00
Equal Rights Center, 11 Dupont Circle, NW., Washington, DC 20036	Kate Scott, 202–370–3220	3	300,000.00
Fair Housing Council of Suburban Philadelphia, Inc., 455 Maryland Drive, Suite 190, Fort Washington, PA 19034.	James Berry, 267–419–8918	3	300,000.00
Fair Housing Partnership of Greater Pittsburgh, 2840 Liberty Avenue, Pittsburgh, PA 15222.	Jay Dworin, 412–391–2535	3	300,000.00
Fair Housing Rights Center in Southeastern Pennsylvania, 444 N. 3rd Street, Suite 110, Philadelphia, PA 19123.	Angela McIver, 215–625–0700	3	300,000.00
Housing Opportunities Made Equal of Virginia, Inc., 626 E. Broad Street, Suite 400, Richmond, VA 23219.	Andrew Haugh, 804–237–7542	3	300,000.00
National Community Reinvestment Samira Coalition, Inc., 727 15th Street NW., Suite 900, Washington, DC 20005.	Cook Gaines, 202–628–8866 ...	3	300,000.00
National Fair Housing Alliance, 1101 Vermont Avenue NW., Washington, DC 20005.	Catherine Cloud, 202–898–1661.	3	300,000.00
Northern West Virginia Center for Independent Living, 601 East Brockway Avenue, Morgantown, WV 26501.	Jan Derry, 304–296–6091	3	300,000.00
Southwestern Pennsylvania Legal Services, Inc., 10 West Cherry Avenue, Washington, PA 15301.	Brian Gorman, 724–225–6170 ..	3	300,000.00
Bay Area Legal Services, Inc., 1302 North 19th Street, Suite 400, Tampa, FL 33603.	Migdalia Figueroa, 813–232–1222.	4	300,000.00
Central Alabama Fair Housing Center, 2867 Zelda Road, Montgomery, AL 36106	Faith Cooper, 334–263–4663 ...	4	300,000.00
Community Legal Services of Mid-Florida, Inc., 128 Orange Avenue, Daytona Beach, FL 32114.	Suzanne Edmunds, 386–255–6573.	4	300,000.00
Fair Housing Center of Northern Alabama, 1820 7th Avenue North, Suite 110, Birmingham, AL 35203.	Lila Hackett, 205–324–0111	4	202,816.03
Fair Housing Center of the Greater Palm Beaches, Inc. 1300 W. Lantana Road, Suite 200, Lantana, FL 33462.	Vince Larkin, 561–533–8717	4	300,000.00
Fair Housing Continuum, Inc., 4760 N. Hwy. US 1, Suite 203, Melbourne, FL 32935.	David Baade, 321–757–3532 ...	4	300,000.00
Housing Education and Economic Development, Inc., 3405 Medgar Evers Blvd., Jackson, MS 39213.	Charles Harris, 601–981–1960	4	233,538.00
Housing Opportunities Project for Excellence, Inc., 11501 NW., 2nd Avenue, Miami, FL 33168.	Keenya Robertson, 305–759–7755.	4	300,000.00
Jacksonville Area Legal Aid, Inc., 126 West Adams Street, Jacksonville, FL 32202.	James Kowalski, 904–356–8371.	4	424,979.00
Legal Aid of North Carolina, Inc., 224 S. Dawson Street, Raleigh, NC 27601	Jeffrey Dillman, 919–861–1884	4	300,000.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944	4	300,000.00
Lexington Fair Housing Council, Inc., 207 E. Reynolds Road, Suite 130, Lexington, KY 40517.	Arthur Crosby, 859–971–8067 ..	4	300,000.00
Metro Fair Housing Services, Inc., 215 Lakewood, SW., Atlanta, GA 30315	Gail Williams, 404–524–0000 ...	4	300,000.00
Mobile Fair Housing Center, Inc., P.O. Box 161202, Mobile, AL 36616	Teresa Bettis, 251–479–1532 ...	4	300,000.00
Tennessee Fair Housing Council, Inc., 107 Music City Circle, Suite 318, Nashville, TN 37214.	Tracey McCartney, 615–874–2344.	4	300,000.00
West Tennessee Legal Services, Inc., 210 West Main Street, Jackson, TN 38301.	Catherine Clayton, 731–426–1311.	4	300,000.00
Access Living of Metropolitan, Chicago, 115 West Chicago Avenue, Chicago, IL 60654.	Bianca Barr, 312–640–2113	5	300,000.00
Chicago Lawyers' Committee for Civil Rights Under Law, Inc., 100 North LaSalle Street, Suite 600, Chicago, IL 60602.	Bonnie Allen, 312–202–3652	5	300,000.00
Fair Housing Center of Central Indiana, Inc., 615 N. Alabama Street, Suite 426, Indianapolis, IN 46204.	Amy Nelson, 317–644–0673	5	300,000.00
Fair Housing Center of Metropolitan Detroit, 220 Bagley Street, Suite 102, Detroit, MI 48226.	Margaret Brown, 313–963–1274	5	300,000.00

Applicant name	Contact	Region	Award amt.
Fair Housing Center of Southeastern Michigan, P.O. Box 7825, Ann Arbor, MI 48107.	Pamela Kisch, 734–994–3426 ..	5	300,000.00
Fair Housing Center of Southwest Michigan, 405 W. Michigan, Kalamazoo, MI 49007.	Robert Ells, 269–276–9100	5	300,000.00
Fair Housing Center of West Michigan, 20 Hall Street SE., Grand Rapids, MI 49507.	Nancy Haynes, 616–451–2980	5	300,000.00
Fair Housing Contact Services, Inc., 441 Wolf Ledges Parkway, Suite 200, Akron, OH 44311.	Tamala Skipper, 330–376–6191	5	300,000.00
Fair Housing Opportunities of NW., Ohio, Inc., 432 N. Superior Street, 432 N. Superior Street, Toledo, OH 43604.	Michael Fehlen, 419–243–6163	5	300,000.00
Fair Housing Resource Center, Inc., 1100 Mentor Avenue, Painesville, OH 44077.	Patricia Kidd, 440–392–0147	5	300,000.00
HOPE Fair Housing Center, 245 W. Roosevelt Road, Building 15, Suite 107, West Chicago, IL 60185.	Anne Houghtaling, 630–690–6500.	5	300,000.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc., 2400 Reading Road, Suite 118, Cincinnati, OH 45202.	Jeniece Jones, 513–721–4663	5	300,000.00
Housing Research and Advocacy Center, 2728 Euclid Avenue, Suite 200, Cleveland, OH 44115.	Carrie Pleasants, 216–361–9240.	5	300,000.00
John Marshall Law School, 315 S. Plymouth Court Chicago, IL 60604	Michael Seng, 312–986–2397 ..	5	300,000.00
Legal Services of Eastern Michigan, 436 S. Saginaw Street, Suite 101, Flint, MI 48502.	Jill Nylander, 810–234–2621	5	300,000.00
Metropolitan Milwaukee Fair Housing Council, Inc., 600 East Mason Street, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	300,000.00
Miami Valley Fair Housing Center, Inc., 505 Riverside Drive, Dayton, OH 45405	Jim McCarthy, 937–223–6035 ..	5	300,000.00
Mid-Minnesota Legal Assistance, 430 First Avenue North, Suite 300, Minneapolis, MN 55401.	Lisa Cohen, 612–746–3770	5	300,000.00
Open Communities, 614 Lincoln Avenue, Winnetka, IL 60093	David Luna, 847–501–5760	5	300,000.00
Prairie State Legal Services, Inc., 303 N. Main Street, Suite 600, Rockford, IL 61101.	David Wolowitz, 630–580–3309	5	300,000.00
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430.	John Petruszak, 708–957–4674	5	300,000.00
Austin Tenants Council, Inc., 1640B E. Second Street, Suite 150, Austin, TX 78702.	Juliana Gonzales, 512–474–7007.	6	300,000.00
Greater New Orleans Fair Housing Action Center, Inc., 404 South Jefferson Davis Parkway, New Orleans, LA 70119.	Cashauna Hill, 504–208–5916 ..	6	300,000.00
Greater Houston Fair Housing Center, P.O. Box 292, Houston, TX 77001	Daniel Bustamante, 713–641–3247.	6	300,000.00
Legal Aid Services of Oklahoma, Inc., 2915 N. Classen Blvd. Oklahoma City, OK 73106.	Michael Figgins, 405–488–6768	6	300,000.00
Metropolitan Fair Housing Council of Oklahoma City, 312 N 28th Street, Suite 112, Oklahoma City, OK 73105.	Mary Dulan, 405–232–3247	6	300,000.00
San Antonio Fair Housing Council, Inc., 4414 Centerview Drive, Suite 229, San Antonio, TX 78228.	Sandra Tamez, 210–733–3247	6	375,000.00
Family Housing Advisory Services, Inc., 2401 Lake Street, Omaha, NE 68111	Joseph Garcia, 402–934–9996	7	300,000.00
Metropolitan St. Louis Equal Housing and Opportunity Council, 1027 S. Vandeventer Avenue, 6th Floor, St. Louis, MO 63110.	Willie Jordan, 314–448–9063 ...	7	300,000.00
Denver Metro Fair Housing Center, 3401 Quebec Street, Denver, CO 80207	Arturo Alvarado, 720–279–4291	8	300,000.00
Disability Law Center, 205 N 400 W., Salt Lake City, UT 84103	Adina Zahradnikova, 801–363–1347.	8	282,830.00
Montana Fair Housing, Inc., 519 East Front Street, Butte, MT 59701	Pamela Bean, 406–782–2573 ..	8	205,838.00
Arizona Fair Housing Center, 615 N. 5th Avenue, Phoenix, AZ 85003	Kanitta Padilla, 602–548–1599	9	300,000.00
Bay Area Legal Aid, 1735 Telegraph Avenue, Oakland, CA 94612	Jaclyn Pireno, 510–250–5229 ..	9	300,000.00
California Rural Legal Assistance, Inc., 2201 Broadway, Suite 815 Oakland, CA 94105.	Susan Podesta, 530–742–5191	9	300,000.00
Fair Housing Council of Central California, 333 W. Shaw Avenue, Suite 14, Fresno, CA 93704.	Marilyn Borelli, 559–244–2950	9	300,000.00
Fair Housing Council of Riverside County, Inc., 3933 Mission Inn Avenue, Riverside, CA 92501.	Rose Mayes, 951–682–6581	9	300,000.00
Fair Housing of Marin, 1314 Lincoln Avenue, San Rafael, CA 94901	Caroline Peattie, 415–457–5025	9	300,000.00
Greater Bakersfield Legal Assistance, Inc., 615 California Avenue, Bakersfield, CA 93304.	Estela Casas, 661–334–4660 ...	9	300,000.00
Greater Napa Valley Fair Housing Center, 1804 Solcol Avenue, Napa, CA 94559	Pablo Zatarain, 650–815–6199	9	300,000.00
Inland Mediation Board, 1500 South Haven Avenue, Suite 101, Ontario, CA 91761.	Lynne Anderson, 909–984–2254.	9	300,000.00
Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813	Elise Von Dohlen, 808–527–8056.	9	350,000.00
Legal Aid Society of San Diego, Inc., 110 S Euclid Avenue, San Diego, CA 92114.	Branden Butler, 619–471–2623	9	300,000.00
Orange County Fair Housing Council, 1516 Brookhollow Drive, Santa Ana, CA 92705.	David Levy, 714–569–0823	9	300,000.00
Project Sentinel Inc., 1490 Camino Real, Santa Clara, CA 95050	Ann Marquart, 888–324–7468 ..	9	300,000.00
Silver State Fair Housing Council, 110 West Arroyo Street, Suite A, Reno, NV 89509.	Katherine Knister, 775–324–0990.	9	300,000.00

Applicant name	Contact	Region	Award amt.
Southern California Housing Rights Center, 3255 Wilshire Blvd., Los Angeles, CA 90010.	Chancela Al-Mansour, 213–387–8400.	9	300,000.00
Southwest Fair Housing Council, 2030 E. Broadway Blvd., Suite 101, Tucson, AZ 85719.	Jay Young, 520–798–1568	9	300,000.00
Alaska Legal Services Corporation, 1016 W. 16th Avenue, Suite 200, Anchorage, AK 99501.	Nikole Nelson, 907–222–4508 ..	10	300,000.00
Fair Housing Center of Washington, 1517 South Fawcett, Suite 200, Tacoma, WA 98302.	Lauren Walker Lee, 253–274–9523.	10	300,000.00
Fair Housing Council of Oregon, 1221 SW. Yamhill Street, Suite 305, Portland, OR 97204.	Allan Lazo, 503–223–8197	10	300,000.00
Intermountain Fair Housing, Council, Inc., 5460 W. Franklin Road, Suite M 200, Boise, ID 83702.	Zoe Ann Olson, 208–383–0695	10	300,000.00
Northwest Fair Housing Alliance, 35 W., Main, Spokane, WA 99201	Marley Hochendoner, 509–209–2667.	10	300,000.00

[FR Doc. 2016–29756 Filed 12–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N172; FXES11140200000–178–FF02ENEH00]

Renewing an Expired Golden-Cheeked Warbler Incidental Take Permit in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments on the application.

SUMMARY: Under the Endangered Species Act of 1973, as amended, we, the U.S. Fish and Wildlife Service, intend to reissue an expired golden-cheeked warbler (GCWA) incidental take permit (ITP) in Travis County, Texas. The ITP, which would be in effect for 10 years from the issuance date, if granted, would reauthorize GCWA incidental take. We will not accept comments on the previously approved Environmental Assessment/Habitat Conservation Plan (HCP).

DATES: To ensure consideration, written comments must be received or postmarked on or before January 12, 2017.

ADDRESSES: *Document Availability:* You may obtain copies of the final EA/HCP by the following means:

- *Internet: http://www.fws.gov/southwest/es/AustinTexas/.*
- *In-Person:* The following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:
  - U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
  - U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.
- *U.S. Mail:* U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, Attention: HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Comment submission: You may submit written comments by one of the following methods:

- *Email: FW2_AUES_Consult@fws.gov.* Please note that your request is in reference to the Aaron Ross Permit (TE010556–2).
- *Hard copy:* Via U.S. mail to Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; or via fax to 512–490–0974. Please note that your request is in reference to the Aaron Ross Permit (TE 010556–2).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, by U.S. mail at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; or via telephone at (512) 490–0057.

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), we, the U.S. Fish and Wildlife Service, intend to reissue an expired golden-cheeked warbler (GCWA) incidental take permit (ITP) for single-family residence construction on a 0.75-acre site located on City Park Road, Travis County, Texas. Aaron Ross (applicant) has applied for an ITP (TE010556–2) under the Act, section 10(a)(1)(B). On July 21, 1999, we issued a GCWA incidental take permit to James Hunt. The permit (TE010556–0) duration was 5 years and expired on July 21, 2004. On June 5, 2006, we renewed that permit through April 19, 2011. The ITP reissuance Mr. Ross requested would be in effect for 10 years from the issuance date, if granted, and would reauthorize GCWA incidental take. Previous **Federal Register** notices related to this action are at 64 FR 26771 (May 17, 1999) and 71 FR 7561 (February 13, 2006).

Proposed Action

The proposed action involves our reissuing an ITP for single-family residence construction and occupation. The ITP would cover GCWA ''take'' associated with developing a 0.75-acre site located on 10.39 acres.

The requested permit term is 10 years. To meet section 10(a)(1)(B) ITP requirements, the applicant proposes to implement the previously approved Hunt HCP. The HCP describes the conservation measures to minimize and mitigate for the proposed GCWA incidental take to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the species' survival and recovery likelihood in the wild. The applicant will mitigate for the proposed impacts to GCWA habitat by perpetually protecting, managing, and monitoring approximately 9.4 acres under a Travis County conservation easement.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the Act, section 10(c), and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–29817 Filed 12–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 17X]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on January 12, 2017.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey in Township 32 North, Range 6 West, New Mexico Principal Meridian, Colorado, were accepted on October 31, 2016.

The plat and field notes of the dependent resurvey and survey in Township 32 North, Range 5 West, New Mexico Principal Meridian, Colorado, were accepted on November 4, 2016.

The plat incorporating the field notes of the dependent resurvey in Township 49 North, Range 9 East, New Mexico Principal Meridian, Colorado, was accepted on November 14, 2016.

Randy A. Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2016–29818 Filed 12–12–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR08100000, 17XR0680A1, RY.1541CH20.60WA162]

Announcement of Requirements and Registration for a Prize Competition Titled: *Arsenic Sensor Challenge—Stage 1*

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This Challenge seeks to identify new or improved sensors, devices, or test kits to test for arsenic in water within natural and engineered systems. Solutions must improve on the current arsenic measurement methods. Areas of needed improvement include: performance, ease of use, reduction in hazardous waste production, data interpretation, and cost. This is Stage 1 of a planned two-stage Challenge, with the second stage consisting of a prototype demonstration and a larger prize purse. The Bureau of Reclamation is the Seeker for this Challenge.

DATES: Listed below are the specific dates pertaining to this prize competition:

1. Submission period begins on December 13, 2016.

2. Submission period ends on March 13, 2017.

3. Judging period ends on May 12, 2017.

4. Winners announced by June 1, 2017.

ADDRESSES: The *Arsenic Sensor Challenge—Stage 1* Prize Competition will be posted on the following crowd-sourcing platforms where Solvers can register for this prize competition:

1. The Water Pavilion located at the InnoCentive Challenge Center: *https://www.innocentive.com/ar/challenge/browse.*

2. U.S. Federal Government Challenge Platform: *www.Challenge.gov.* InnoCentive, Inc. is administering this challenge under a challenge support services contract with the Bureau of Reclamation. Challenge.gov will re-direct the Solver community to the InnoCentive Challenge Center as the administrator for this prize competition. Additional details for this prize competition, including background information, figures, and the Challenge Agreement specific for this prize competition, can be accessed through either of these prize competition web addresses. The Challenge Agreement contains more details of the prize competition rules and terms that Solvers must agree with to be eligible to compete.

FOR FURTHER INFORMATION CONTACT: Challenge Manager: Dr. David Raff, Science Advisor, Bureau of Reclamation, (202) 513–0516, *draff@usbr.gov;* Andrew Tiffenbach, (303) 445–2393, *atiffenbach@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation (Reclamation) is announcing the following prize competition in compliance with 15 U.S.C. 3719, Prize Competitions.

Prize Competition Summary: Measuring arsenic in the environment and in drinking water is important for protecting human health. Drinking water and wastewater treatment facilities are subject to arsenic regulations in order to limit human exposure and environmental contamination. Privately-owned drinking water wells are tested for arsenic in order to prevent exposure. Contaminated site cleanup requires screening to know where arsenic contamination occurs. Regulatory compliance includes collecting and analyzing samples using approved methods with results available days to weeks later. While current analytical methods are suitable for ensuring regulatory compliance, there is a need for rapid, low-cost monitoring of arsenic that would benefit water treatment plant operations, wastewater monitoring, contaminated site remediation, private well owners, scientific research, and other interested parties.

Routine arsenic monitoring can identify changes in process performance and improve operations. Rapid, on-site monitoring of arsenic in the field can help identify hot spots for more targeted sampling and remediation. Potential barriers to the widespread implementation of on-site arsenic monitoring include the generation of hazardous waste, the unreliability of analytical methods that rely on color charts, the high level of operator effort required to conduct monitoring, and the cost of online analyzers. Collectively, Reclamation and our collaborators hope to stimulate innovation in water sensing

technologies that can lead to more effective, affordable, and reliable methods to monitor water quality. We are launching the Arsenic Sensor Challenge to accelerate the development of new arsenic monitoring methods.

This Challenge consists of two stages:

- Stage 1 is a Theoretical Challenge. Participants will be asked to submit an idea, along with detailed descriptions, specifications, supporting data or literature, and requirements necessary to bring the idea closer to becoming a product.
- If Stage 1 produces winning concepts, Stage 2 is planned as a subsequent Reduction to Practice Challenge. Participants will be asked to present their technology and submit a working prototype that puts their idea into practice.

Stage 1 may award up to 5 prizes from a total prize award pool of $50,000.

Stage 2 envisions a total prize pool of $250,000 and awarding up to 2 prizes.

In addition to the direct monetary award for Stage 2, Reclamation will invite industry, non-profit organizations, and venture capital representatives to be present at the Stage 2 presentations and testing. Participating industry and venture capital representatives will also have the ability to seek and secure potential business deals with Solvers.

This posting only launches the Stage 1 competition. However, information on the envisioned framework and prizes for Stage 2 are available here: *http://www.usbr.gov/research/challenges/current/index.html.* Stage 2 will be officially launched and announced with a separate Challenge.gov posting and a separate **Federal Register** Notice.

Stage 1 is a Theoretical Challenge that requires only a written proposal to be submitted. The Challenge award will be contingent upon evaluation by the Seeker (Reclamation) and the judging panel appointed by the Seeker. The Seeker has a total prize pool budget of $50,000 to pay the top five submission(s) that meet or exceed the criteria below an award of at least $10,000 each. No awards are guaranteed unless they meet or exceed the criteria, and more than one award is not guaranteed. Full or partial awards will be considered for solutions that meet all or some of the criteria, respectively. If only a single submission meets or exceeds the criteria, a single prize award may be as high as $20,000.

To receive an award, the Solvers will not have to transfer their intellectual property rights to the Seeker and will not have to grant the Seekers a non-exclusive license to practice their solutions. Please note that any proposal submitted will not be treated as confidential information. Accordingly, Solvers should take whatever steps they deem necessary to protect their proprietary rights in their solutions prior to submitting their written proposal for consideration in the Challenge (*e.g.* filing provisional or full patent applications on the solution described in the written proposal submitted prior to submission).

Technical Requirements. Describe an approach to substantially improve upon currently available field test kits or online analyzers for arsenic monitoring. Solutions must improve upon technology in *either* the field test kits or online analyzers. Solvers must provide a well-supported, science-based justification about how the proposed technology improves upon currently available products.

A successful solution will overcome or lower barriers to monitoring *as compared to current technologies.* Solvers must compare their proposed solution to currently available products to justify how their solution improves upon current methods (*e.g.,* field test kits or online analyzers). A successful solution will meet the following criteria (full or partial awards will be considered for solutions that meet all or some of the criteria, respectively):

1. Proposed solution does not require subjective data interpretation (*i.e.,* color comparison) to reduce bias between users and environments.

2. Solution does not use or produce a hazardous material (including mercury) that requires frequent handling or disposal.

3. Solvers must explain the anticipated cost of the proposed solution and justify that cost relative to an appropriate technology upon which the proposed solution improves. Targets costs for each technology are:

a. Online Analyzer.

i. Target capital cost < $5000.

ii. Target operating cost < $1000 per year.

b. Field Test Kit/Handheld device.

i. Target capital cost < $500.

ii. Target sample cost < $5/test.

4. Solvers must describe the anticipated performance of the proposed solution based on performance criteria defined below. Criteria follow the nomenclature as defined in Standard Methods for the Examination of Water and Wastewater. Target performance criteria include:

a. Bias < 1.5 parts per billion (ppb) at 10 ppb as Arsenic (As).

i. Bias is defined as the consistent deviation of measured values from the true value, caused by systematic errors in procedure.

ii. Bias is calculated for three replicates using the following equation for a 10 ppb (as As). $Bias = Measured_{avg} - True_{avg}$

b. Precision < 10%.

i. Precision is defined as a measure of the degree of agreement among replicate analyses of a sample.

ii. Precision is calculated as the relative standard deviation (RSD) of five (5) replicates of a 10 ppb (as As) standard using the following equation:

$$RSD = \frac{Standard\ Deviation}{Average}$$

c. Detection range: 1–100 ppb total arsenic.

d. Minimal interferences with an arsenic recovery between 80%–120% in the presence of other constituents.

i. Recovery is defined as the ratio of the measured value relative to the true value.

ii. Recovery is calculated using the following equation for a laboratory-fortified matrix with 50 ppb (as As)):

$$Recovery = \frac{Measured\ Concentration}{True\ Concentration} \times 100\%$$

iii. Recovery will be assessed in a matrix containing:

A. pH 6.0–8.5.

B. Iron at 10 parts per million (ppm).

C. Manganese at 1 ppm.

D. Sulfide at 1 ppm.

E. Phosphate at 1 ppm.

e. Ability to perform quality control on-site using arsenic standards of known concentrations.

f. Ability to quantitatively measure arsenite (As(III)), arsenate (As(V)), or total arsenic (As(III) + As(V)).

5. Solution reduces level of effort for the analyst. Solvers must justify how the proposed solution improves upon currently available methods (*e.g.,* field test kits or online analyzers). Aspects to consider for each method include:

a. Online analyzers.

i. Reagent use, waste production and handling.

ii. Frequency of calibration.

iii. Maintenance requirements.

b. Field test kits.

i. Reagent use, waste production and handling.

ii. Number of steps.

iii. Analysis time.

The Solvers must provide a well-supported justification for how the proposed solution improves upon currently available methods to overcome barriers. The Seekers recognize that the implementation barriers are different between field test kits and online analyzers. Solvers must quantitatively compare their proposed solution to the most relevant commercially available product.

Project Deliverables: This Theoretical Challenge requires a written proposed solution which describes novel technologies or improvements to existing technologies that meet the Solution Requirements described above. Each submission should include:

1. An executive summary (no longer than 1-page) of proposed solution. All Solvers agree to allow the executive summaries of their solutions to be posted on Reclamation's Web page and used in other publications reporting the results of this Challenge.

2. Detailed description of the proposed solution relative to existing technologies that address the Challenge criteria.

3. Rationale as to why the Solver believes that the proposed method will work. This rationale should address each of the Solution Requirements, quantitatively where possible. The Solver should expect that their submittal will be reviewed by experts in the field of arsenic measurement and multiple fields of engineering.

4. Drawings/sketches of the proposed solution, if applicable.

5. Optional (will not impact judging): Description of resources, materials, budget, and proposed timeframe needed to develop a prototype capable of producing data sufficient for evaluations.

The proposal *should not* include any personal identifying information (name, username, company, address, phone, email, personal Web site, resume, *etc.*)

Judging: After the Challenge submission deadline, a Judging Panel will evaluate the submissions and make a decision with regards to the winning solution(s). The Judging Panel may be composed of Federal and/or Non Federal scientists, engineers, and other technical experts, including subject matter experts from the listed collaborators for this Challenge. All Solvers that submit a proposal will be notified on the status of their submissions. Decisions by the Seeker cannot be contested.

Eligibility Rules: To be able to win a prize under this competition, an individual or entity must:

1. Agree to the rules of the competition (15 U.S.C. 3719(g)(1));

2. Be an entity that is incorporated in and maintains a primary place of business in the United States, or (b) in the case of an individual, a citizen or permanent resident of the United States (15 U.S.C. 3719(g)(3)).

However, submissions can be entertained from all Solvers regardless of whether they are U.S. citizens/entities. Meritorious submissions from non-eligible persons and entities, if any, will be recognized in publications issued by the Seeker announcing the results of the competition, such as press releases. Non-U.S citizens/permanent residents or non-U.S entities can also be included on U.S. teams. However, prizes—whether monetary or otherwise—will only be awarded to eligible persons and entities under the authority of the America COMPETES Reauthorization Act of 2010 (15 U.S.C. 3719).

3. Not be a Federal entity or Federal employee acting within the scope of their employment (15 U.S.C. 3719(g)(4)). A Federal entity is defined by 5 U.S.C. Appendix 8G with a list of current Federal entities periodically posted on the **Federal Register**.

4. Assume risks and waive claims against the Federal Government and its related entities (15 U.S.C. 3719(i)(1)(B)); and,

5. Not use Federal facilities, or consult with Federal employees during the competition unless the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

The following individuals or entities are not eligible regardless of whether they meet the criteria set forth above:

1. Any individual or organization who employs an evaluator on the Judging Panel or otherwise has a material business relationship or affiliation with any Judge.

2. Any individual who is a member of any Judge's immediate family or household.

3. The Seeker, participating organizations, and any advertising agency, contractor or other individual or organization involved with the design, production, promotion, execution, or distribution of the prize competition; and all employees, and all members of the immediate family or household of any such individual or organization.

4. Any individual or entity that uses Federal funds to develop the proposed solution now or any time in the past, unless such use is consistent with the grant award, or other applicable Federal funds awarding document. NOTE: Individuals or entities that have been funded by the Federal Government in the past to work within the technical domain of the competition are eligible provided their specific submission was not developed by them with Federal funds. Submissions that propose to improve or adapt existing federally funded technologies for the solution sought in this prize competition are also eligible. Individuals are also encouraged to consult with their employer Ethics Officer for additional guidance and considerations.

Consultation: Reclamation and collaborator scientists, engineers, and technical specialists were consulted in identifying and selecting the topic of this prize competition. Direct and indirect input from various stakeholders and partners were also considered. The U.S. Environmental Protection Agency, Xylem, Inc, the Indian Health Service, the National Institute of Standards and Technology, the U.S. Agency for International Development, the Agricultural Research Service, and the U.S. Geological Survey collaborated with Reclamation on various aspects of this Challenge.

Public Disclosure: InnoCentive, Inc. is administering this challenge under a challenge support services contract with Reclamation. Participation is conditioned on providing the data required on InnoCentive's online registration form. Personal data will be processed in accordance with InnoCentive's Privacy Policy which can be located at *http://www.innocentive.com/privacy.php.* Before including your address, phone number, email address, or other

personal identifying information in your proposal, you should be aware that the Seeker is under no obligation to withhold such information from public disclosure, and it may be made publicly available at any time. Neither InnoCentive nor the Seeker is responsible for human error, theft, destruction, or damage to proposed solutions, or other factors beyond its reasonable control.

Liability and Indemnification: By participating in this Challenge, each Solver agrees to assume any and all risks and waive claims against the federal government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, each Solver agrees to indemnify the federal government against third party claims for damages arising from or related to Challenge activities

No Insurance Required: Based on the subject matter of the Challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from competition participation, Solvers are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this Challenge.

Dated: November 18, 2016.

David Raff,

Science Advisor.

[FR Doc. 2016–29722 Filed 12–12–16; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR08100000, 17XR0680A1, RY.1541CH20.60WA161]

Announcement of Requirements and Registration for a Prize Competition Titled: More Water Less Concentrate–Stage 1.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This Challenge seeks to identify innovative solutions to expand usable water supplies by maximizing fresh water production from inland desalination systems in a cost effective and environmentally sound manner. Currently, significant and desirable water supplies are trapped in concentrate streams that are a byproduct of desalination technologies. The cost to manage or dispose of concentrate is rather large and very limiting to utilization of desalination in inland applications. This is Stage 1 of a planned three-stage Challenge, with the second and third stages consisting of prototype demonstrations in lab and field settings and larger prize purses.

DATES: Listed below are the specific dates pertaining to this prize competition:

1. Submission period begins on December 13, 2016.

2. Submission period ends on March 13, 2017.

3. Judging period ends on May 12, 2017.

4. Winners announced by June 1, 2017.

ADDRESSES: The *More Water Less Concentrate—Stage 1* Prize Competition will be posted on the following crowd-sourcing platforms where Solvers can register for this prize competition:

1. The Water Pavilion located at the InnoCentive Challenge Center: *https://www.innocentive.com/ar/challenge/browse.*

2. U.S. Federal Government Challenge Platform: *www.Challenge.gov.* InnoCentive, Inc. is administering this challenge under a challenge support services contract with the Bureau of Reclamation. *Challenge.gov* will re-direct the Solver community to the InnoCentive Challenge Center as the administrator for this prize competition. Additional details for this prize competition, including background information, figures, and the Challenge Agreement specific for this prize competition, can be accessed through either of these prize competition web addresses. The Challenge Agreement contains more details of the prize competition rules and terms that Solvers must agree with to be eligible to compete.

FOR FURTHER INFORMATION CONTACT: Challenge Manager: Dr. David Raff, Science Advisor, Bureau of Reclamation, (202) 513–0516, *draff@usbr.gov;* Andrew Tiffenbach, (303) 445–2393, *atiffenbach@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation (Reclamation) is announcing the following prize competition in compliance with 15 U.S.C. 3719, Prize Competitions.

Prize Competition Summary: In many areas, particularly in the Western United States, existing sources of fresh water are fully or over-allocated. When inland communities are evaluating potential sources for a new water supply, desalination is often overlooked or not considered due to its perceived high cost. A major contributing factor to the cost is the additional handling and/or treatment required to manage concentrate streams where significant and desirable additional water resources are also lost.

Desalination processes, typically membrane or thermal based processes, produce a concentrate stream composed primarily of the salts in the feed and some of the initial feed water. The cost to manage or dispose of concentrate streams is often prohibitive for inland brackish desalination and is currently a limiting factor to more widespread utilization of desalination in inland applications. This challenge is seeking solutions to minimizing the concentrate stream volume and associated handling costs while maximizing the useable water produced by the process.

Desalination process recovery is often limited by capital and operational treatment costs. Saturation levels of sparingly soluble species such as calcium sulfate ($CaSO_4$), calcium carbonate ($CaCO_3$), and silica (SiO_2) are reached in desalination processes as the saltwater feed is processed to fresh water leaving behind a highly saturated stream referred to as concentrate. Thus, classes of solutions to the concentrate problem might increase the quantity of treated water recovered from desalination processes without incurring issues with sparingly soluble species, therefore decreasing the volume of concentrate generated and increasing the overall system recovery. Other solutions may include novel desalination technologies or improvements to existing technologies that will increase the overall system recovery of desalination processes while also overcoming other operational and cost hurdles. Another class of solutions to the concentrate problem is to post-treat the concentrate stream that is produced to reduce its concentrate volume or to produce a solid waste product; thereby reducing the volume requiring disposal.

In this prize competition, the Bureau of Reclamation is seeking innovative solutions to increase the amount of usable water supplies in an affordable, environmentally sustainable, and efficient manner to make desalination more accessible to communities looking to expand water supplies. Solutions can be novel technologies or approaches that build upon existing technologies and approaches for the production of fresh water from saline sources that increase the overall system recovery beyond the level of what is currently

achieved. Solutions can include ideas to reduce the large concentrate volumes by treatment of the concentrate or by selectively removing less soluble species from either the feed water, concentrate streams or at any other part of the desalination system. Other ideas to control or inhibit scale formation due to sparingly soluble species are also being sought along with any new technologies or improvements to existing technologies that increase the overall system recovery of a desalination system. This Challenge consists of three stages:

- Stage 1 is a Theoretical Challenge requiring a white paper submittal. Participants are asked to submit an idea, such as a process or equipment design, along with anticipated impact (if successful), detailed descriptions, specifications, supporting data or literature, and requirements necessary to bring the idea to practice. Stage 1 may award up to 6 prizes from a total prize award pool of $150,000.
- If Stage 1 proves successful, Stage 2 is planned as a subsequent Reduction-to-Practice Challenge to demonstrate proof-of-concept data at the bench scale. Stage 2 envisions a total prize pool of $450,000 or more, and awarding up to 3 prizes.
- Stage 3 is envisioned as a Grand Challenge, Reduction-to-Practice demonstration at pilot-scale in a field-test setting. Stage 3 envisions a total prize pool of $500,000 or more, and awarding up to 2 prizes.

In addition to the direct monetary awards for Stages 2 and 3, Reclamation will invite industry, non-profit organizations, and venture capital representatives to be present at the Stages 2 and 3 presentations and testing. Participating industry and venture capital representatives will also have the ability to seek and secure potential business deals with Solvers.

This posting only launches the Stage 1 competition. However, information on the envisioned framework and prizes for Stages 2 and 3 are available here: *http://www.usbr.gov/research/challenges/current/index.html.* Subsequent stages will be officially launched and announced with a separate Challenge.gov posting and a separate **Federal Register** Notice.

Stage 1 is a Theoretical Challenge that requires only a written proposal to be submitted. The Challenge award will be contingent upon critical analysis and evaluation by the Seeker (Reclamation) and the judging panel appointed by the Seeker. The Seeker has a total prize pool budget of $150,000 to pay the top six submission(s) that meet or exceed the criteria below an award of at least $25,000 each. No awards are guaranteed unless they meet or exceed the criteria, and more than one award is not guaranteed. Full or partial awards will be considered for solutions that meet all or some of the criteria, respectively. If only a single submission meets or exceeds the criteria, the prize award may be as high as $50,000.

To receive an award, the Solvers will not have to transfer their intellectual property rights to the Seeker and will not have to grant the Seekers a non-exclusive license to practice their solutions. Please note that any proposal submitted will not be treated as confidential information. Accordingly, Solvers should take whatever steps they deem necessary to protect their proprietary rights in their solutions prior to submitting their written proposal for consideration in the Challenge (*e.g.* filing provisional or full patent applications on the solution described in the written proposal submitted prior to submission).

Technical Requirements. The goal of this Challenge is to identify methods to increase the overall system recovery in a cost effective and environmentally safe manner to reduce large volumes of concentrate that requires disposal and to increase usable water supplies. Overall system recovery is defined as the total product water divided by the total feed water. This challenge is seeking solutions to minimizing the concentrate stream while maximizing the useable water produced by the process.

One class of solutions to the concentrate problem is to increase the quantity of treated water recovered from desalination processes, which, a priori, decreases the volume of concentrate generated. Desalination process recovery is often limited when saturation levels of sparingly soluble species (*e.g.* $CaSO_4$, $CaCO_3$, SiO_2) are reached in the process when fresh water is generated from the desalination process and volume of feed water decreases. Another class of solutions to the concentrate problem is to treat the concentrate stream that is produced to reduce its volume or to produce a solid waste product; thereby reducing the volume requiring disposal. Other solutions can include novel desalination technologies with higher overall system recovery than conventional desalination technologies.

Three sample water qualities from different inland brackish desalination locations with the various recoveries that each plant is currently able to achieve are provided in the challenge posting available through web addresses included under the **ADDRESSES** section of this **Federal Register** Notice.

Things To Avoid

The Seeker is not interested in the following:

1. Surface and sewer discharge solutions.
2. Known evaporation pond solutions (improvements could be acceptable).
3. Deep well injection solutions.
4. Existing technologies without any improvements to reduce concentrate volume, reduce cost or operational complexity, etc. of the existing desalination technology, *i.e.* reverse osmosis (RO), thermal or other membrane separation. The Seeker is not looking for a review of all known techniques so this requires something new/novel in your solution.

The judging panel will evaluate each proposed solution against the following Solution Requirements:

Must Have

1. *Increase in overall system recovery:* Solution must explain how the approach can increase overall system recovery on one of the three water samples provided in Table 1 for a plant producing at least 1 million gallons of drinking water quality per day. Solution must be capable of treating large volumes of at least 1 million gallons per day. Typical desalination systems generate large volumes of concentrate per day that require further treatment and/or handling.
2. *Cost effective:* Solutions are sought that can improve the recovery and reduce concentrate volume in a cost effective manner. Solutions cannot significantly increase life cycle (*i.e.* capital, operating, and maintenance) costs of systems.
3. *Environmentally friendly:* Solutions should not create additional waste (in volume and complexity) than what exists today. The solution needs to be environmentally friendly and not create more problems than what is being solved. Thus, the solution must provide an assessment of life-cycle impacts relative to existing inland desalination approaches.

Nice to have (not as important as the requirements above, but would add value to a submission):

1. Solution demonstrates an increase in Overall System Recovery on two or more of the three water samples provided in Table 1 producing a minimum of 1 million gallons per day of drinking water quality.
2. Submissions that meet the requirements will also be judged on the following items:

- Feasibility (technical/scientific, economic and environmental life-cycle considerations).

• Flexibility to changing water quality.
• Energy efficiency.
• Scalability.

Project Deliverables: This Theoretical Challenge requires a written proposed solution which describes novel new technologies or improvements to existing technologies to increase overall system recovery and decrease the volume of concentrate. Each submission should include:

1. A one-paragraph executive summary of the proposed solution. All Solvers agree to allow the executive summaries of their solutions to be posted on Reclamation's Web page and used in other publications reporting the results of this Challenge.

2. Idea description that should include:

a. Detailed description of a method to increase overall system recovery and decrease the volume of concentrate. The Solver must describe with a high level of technical detail as to how the system would meet or not meet each of the ''must have'' and ''nice to have'' Solution Requirements described above. The Solver should expect that their submittal will be reviewed by experts in the field of water treatment, chemistry, and multiple fields of engineering. If the level of detail is insufficient for the experts, it can't be scored as feasible.

b. Rationale as to why the Solver believes that the proposed method will work. This rationale should address each of the Solution Requirements and should be supported with relevant examples/data.

c. Drawings/sketches of the proposed system, if applicable.

The proposal *should not* include any personal identifying information (name, username, company, address, phone, email, personal Web site, resume, *etc.*)

Judging: After the Challenge submission deadline, a Judging Panel will evaluate the submissions and make a decision with regards to the winning solution(s). The Judging Panel may be composed of Federal and/or Non Federal scientists, engineers, and other technical experts, including subject matter experts from the listed collaborators for this Challenge. All Solvers that submit a proposal will be notified on the status of their submissions. Decisions by the Seeker cannot be contested.

Eligibility Rules: To be able to win a prize under this competition, an individual or entity must:

1. Agree to the rules of the competition (15 U.S.C. 3719(g)(1));

2. Be an entity that is incorporated in and maintains a primary place of business in the United States, or (b) in the case of an individual, a citizen or permanent resident of the United States (15 U.S.C. 3719(g)(3)).

However, submissions can be entertained from all Solvers regardless of whether they are U.S. citizens/entities. Meritorious submissions from non-eligible persons and entities, if any, will be recognized in publications issued by the Seeker announcing the results of the competition, such as press releases. Non-U.S citizens/permanent residents or non-U.S entities can also be included on U.S. teams. However, prizes—whether monetary or otherwise—will only be awarded to eligible persons and entities under the authority of the America COMPETES Reauthorization Act of 2010 (15 U.S.C. 3719).

3. Not be a Federal entity or Federal employee acting within the scope of their employment (15 U.S.C. 3719(g)(4)). A Federal entity is defined by 5 U.S.C. Appendix 8G with a list of current Federal entities periodically posted on the **Federal Register**.

4. Assume risks and waive claims against the Federal Government and its related entities (15 U.S.C. 3719(i)(1)(B)); and,

5. Not use Federal facilities, or consult with Federal employees during the competition unless the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

The following individuals or entities are not eligible regardless of whether they meet the criteria set forth above:

1. Any individual or organization who employs an evaluator on the Judging Panel or otherwise has a material business relationship or affiliation with any Judge.

2. Any individual who is a member of any Judge's immediate family or household.

3. The Seeker, participating organizations, and any advertising agency, contractor or other individual or organization involved with the design, production, promotion, execution, or distribution of the prize competition; and all employees, and all members of the immediate family or household of any such individual or organization.

4. Any individual or entity that uses Federal funds to develop the proposed solution now or any time in the past, unless such use is consistent with the grant award, or other applicable Federal funds awarding document. NOTE: Individuals or entities that have been funded by the Federal Government in the past to work within the technical domain of the competition are eligible provided their specific submission was not developed by them with Federal funds. Submissions that propose to improve or adapt existing federally funded technologies for the solution sought in this prize competition are also eligible. Individuals are also encouraged to consult with their employer Ethics Officer for additional guidance and considerations.

Consultation: Reclamation and collaborator scientists, engineers, and technical specialists were consulted in identifying and selecting the topic of this prize competition. Direct and indirect input from various stakeholders and partners were also considered. The U.S. Environmental Protection Agency, the U.S. Army, U.S Army Corps of Engineers, the Water Environment and Reuse Foundation, and the Water Research Foundation are collaborating with Reclamation on various aspects of this Challenge.

Public Disclosure: InnoCentive, Inc. is administering this challenge under a challenge support services contract with Reclamation. Participation is conditioned on providing the data required on InnoCentive's online registration form. Personal data will be processed in accordance with InnoCentive's Privacy Policy which can be located at *http://www.innocentive.com/privacy.php.* Before including your address, phone number, email address, or other personal identifying information in your proposal, you should be aware that the Seeker is under no obligation to withhold such information from public disclosure, and it may be made publicly available at any time. Neither InnoCentive nor the Seeker is responsible for human error, theft, destruction, or damage to proposed solutions, or other factors beyond its reasonable control.

Liability and Indemnification: By participating in this Challenge, each Solver agrees to assume any and all risks and waive claims against the federal government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, each Solver agrees to indemnify the federal government against third party claims for damages arising from or related to Challenge activities.

No Insurance Required: Based on the subject matter of the Challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or

property damage, or loss potentially resulting from competition participation, Solvers are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this Challenge.

Dated: November 18, 2016.

David Raff,

Science Advisor.

[FR Doc. 2016–29723 Filed 12–12–16; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–007; Investigation No. 337–TA–1021 (Consolidated)]

Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor and Certain Personal Transporters and Components Thereof; Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 17) of the presiding administrative law judge (''ALJ'') granting complainants' motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–1007, *Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor* under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (''section 337''), on June 24, 2016, based on a complaint filed by Segway, Inc. of Bedford, New Hampshire; DEKA Products Limited Partnership of Manchester, New Hampshire; and Ninebot (Tianjin) Technology Co., Ltd. of Tianjin, China (collectively, ''Complainants''). 81 *Fed. Reg.* 41342–43 (Jun. 24, 2016). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,302,230; 6,651,763 (''the '763 patent''); 7,023,330 (''the '330 patent''); 7,275,607; 7,479,872 (''the '872 patent''); and 9,188,984 (''the '984 patent''); and U.S. Trademark Registration Nos. 2,727,948 and 2,769,942. The complaint named numerous respondents. The Commission's Office of Unfair Import Investigations (''OUII'') was named as a party.

On September 21, 2016, the Commission instituted Inv. No. 337–TA–1021, *Certain Personal Transporters and Components Thereof,* based on a complaint filed by the same Complainants. 81 *Fed. Reg.* 64936–37 (Sept. 21, 2016). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,302,230 and 7,275,607. The complaint named numerous respondents. OUII was also named as a party. The Commission assigned Investigation No. 337–TA–1021 to ALJ Shaw, the presiding ALJ in Investigation No. 337–TA–1007, and directed him to consolidate these investigations. *See id.* at 64937.

On November 14, 2016, the ALJ issued an ID (Order No. 17) in which he granted complainants' motion to amend the complaint and notice of investigation to assert the '763, '330, and '872 patents against respondent Jetson Electric Bikes LLC, and to terminate all asserted claims of the '984 patent as to all respondents. No party petitioned for review of the subject ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 7, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29781 Filed 12–12–16; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Criminal Procedure

AGENCY: Advisory Committee on the Federal Rules of Criminal Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure has been canceled: Criminal Rules Hearing on January 4, 2017 in Phoenix, Arizona. The announcement for this meeting was previously published in 81 FR 52713. The public hearing on proposed amendments to the Federal Rules of Criminal Procedure scheduled for February 24, 2017, in Washington, DC, remains scheduled, subject to sufficient expressions of interest.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 6, 2016.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2016–29812 Filed 12–12–16; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Automotive Consortium for Embedded Security™

Notice is hereby given that, on November 4, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Automotive Consortium for Embedded Security™ (''ACES'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Delphi Automotive Systems, LLC Kokomo, IN, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ACES intends to file additional written notifications disclosing all changes in membership.

On March 20, 2015, ACES filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 30, 2015 (80 FR 24279).

The last notification was filed with the Department on September 27, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2016 (81 FR 76627).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29876 Filed 12–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on October 24, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sopra Steria TME, Paris, FRANCE; INVITE Communications Co. Ltd., Tokyo, JAPAN; Higher Logic, LLC, Arlington, VA; Alaska Communications Systems Holdings, Inc., Anchorage, AK; Smart City and Intelligent Computing Research Center of Lanzhou University, Lanzhou, PEOPLE'S REPUBLIC OF CHINA; Shanghai Academy, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Savvi AU Pty Ltd., Collingwood, AUSTRALIA; N-able (Pvt) Ltd., Colombo, SRI LANKA; Bercut LLC, St. Petersburg, RUSSIA; Smart Social City, Madrid, SPAIN; Mauritius Telecom, Port Louis, MAURITIUS; Vertical Telecoms Pty Ltd., Alexandria, AUSTRALIA; TransWare AG, Kusel, GERMANY; Ipronto Communications B.V., Rotterdam, NETHERLANDS; BLUGEM COMMUNICATIONS LIMITED, Barnstaple, UNITED KINGDOM; Vodafone Hutchison Australia, North Sydney, AUSTRALIA; Elastic Path Software Inc., Vancouver, CANADA; Intellity Consulting, SpA, Santiago, CHILE; T-Systems International Services GmbH, Frankfurt, GERMANY; Modern Telecom Systems IT, Cairo, EGYPT; Xavient Information Systems Inc., Simi Valley, CA; Isle of Man—MICTA, Ballasalla, ISLE OF MAN; MobileAware, Inc., Boston, MA; and GRNET S.A., Athens, GREECE, have been added as a parties to this venture.

Also, the following members have changed their names: Datalynx Holding AG to Datalynx AG, Basel-Stadt, SWITZERLAND; Cogeco Cable Inc. to Cogeco Communications, Montreal, CANADA; Symsoft AB Solutions to Symsoft AB, Stockholm, SWEDEN; and MDS to MDS Global, Warrington, UNITED KINGDOM.

In addition, the following parties have withdrawn as parties to this venture: 3Consulting, Lagos, NIGERIA; Blackbridge Associates, Dubai, UNITED ARAB EMIRATES; Bright Consulting, Sofia, BULGARIA; Cox Communications, Atlanta, GA; CyberFlow Analytics, La Jolla, CA; Facebook, Menlo Park, CA; GCHQ, Cheltenham, UNITED KINGDOM; Icaro Technologies, Campinas, BRAZIL; ISPIN AG, Bassersdorf, SWITZERLAND; itcps Management Consulting AG, Wollerau, SWITZERLAND; Jastorrie.com, Maidenhead, UNITED KINGDOM; Jetsynthesys, Pune, INDIA; Kron Telekomunikasyon A.S., Istanbul, TURKEY; NetBoss Technologies, Inc., Sebastian, FL; Nextel Brazil, Sao Paolo, BRAZIL; NOS Comunicações, Lisbon, PORTUGAL; Oliver Solutions Ltd., Herzlia, ISRAEL; OpenLimits Business Solutions Lda, Coimbra, PORTUGAL; ORB SOFTWARE AND SYSTEMS PTE LTD, Singapore, SINGAPORE; PacketFront Software Solutions AB, Kista, SWEDEN; Parkyeri, Istanbul, TURKEY; RAO Infosystems, Mysore, INDIA; Ridgeline Solutions Australia, Manuka, AUSTRALIA; Righteous Technologies, Hyderabad, INDIA; SATEC GROUP, Madrid, SPAIN; Symantec Corporation, Mountain View, CA; TEO LT, AB, Vilnius, LITHUANIA; Transverse, Austin, TX; Unscrambl LLC, Atlanta, GA; Verizon Telematics, Inc., Atlanta, GA; Viavi Solutions, Muehleweg, GERMANY; Vísent, Brasília, BRAZIL; Vitria Technology, Inc., Sunnyvale, CA; and Yozma Timeturns, Kinshasa, DEMOCRATIC REPUBLIC OF CONGO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on July 18, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 18, 2016 (81 FR 55234).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29905 Filed 12–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on November 16, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kestrel Corporation, Albuquerque, NM; SHL Pharma, LLC, Deerfield Beach, FL; Metabiota, Inc., San Francisco, CA; Pertexa Healthcare Technologies, Ridgecrest, CA; Mesa Science Associates, Frederick, MD; University of Nebraska Medical Center, Omaha, NE; University of Florida, Institute for Therapeutic Innovation, Gainesville, FL; AbViro LLC, Bethesda, MD; Oryn Therapeutics, LLC, Vacaville, CA; BioFactura, Inc., Frederick, MD; The Conafay Group, Washington, DC; Biologica Modular, Brownsburg, IN; and

DynPort Vaccine Company, LLC, a CSRA Company, Frederick, MD, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on June 23, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 2016 (81 FR 53162).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29873 Filed 12–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alaska Air Group, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Alaska Air Group, Inc., et al.,* Civil Action No. 1:16–cv–02377. On December 6, 2016, the United States filed a Complaint alleging that Alaska Air Group's proposed acquisition of Virgin America Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Alaska to reduce the scope of its codeshare agreement with American Airlines and obtain Antitrust Division approval before selling certain assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Kathleen S. O'Neill, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530 (telephone: 202–307–2931).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8000, Washington, DC 20530, Plaintiff, v. *Alaska Air Group, Inc., 19300 International Boulevard, Seattle, WA 98188,* and *Virgin America Inc., 555 Airport Boulevard, Burlingame, CA 94010,* Defendants.

Case No.: 1:16–cv–02377.
Judge: Reggie B. Walton.
Filed: 12/06/2016.

Complaint

The United States of America (''Plaintiff''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed merger of Defendants Alaska Air Group, Inc. (''Alaska'') and Virgin America Inc. (''Virgin''), and to obtain equitable and other relief as appropriate. The United States alleges as follows:

I. Introduction

1. The airline industry in the United States is dominated by four large airlines—American Airlines, Delta Air Lines, United Airlines, and Southwest Airlines—that collectively account for over 80% of domestic air travel each year. In this highly-concentrated industry, the smaller airlines play a critical competitive role. In order to compete with the four largest airlines, these smaller airlines often must offer consumers lower fares, additional flight options, and innovative services. The proposed merger of Alaska and Virgin would bring together two of these smaller airlines—the sixth- and ninth-largest U.S. carriers, respectively—to create the fifth-largest U.S. airline.

2. Alaska and Virgin both provide award-winning service and tend to offer lower prices than the larger airlines, but they differ in at least one critical respect. Unlike Virgin, Alaska has closely aligned itself with American, the largest U.S. airline, through a commercial relationship known as a codeshare agreement, which allows each airline to market tickets for certain flights on the other's network. The codeshare agreement began in 1999 as a limited arrangement that permitted Alaska to market American's flights on a small number of routes Alaska did not serve on its own. Over the years, the two airlines have significantly expanded their relationship in size and scope through a series of amendments to the codeshare agreement. The most recent of these amendments was executed in April 2016—around the same time Alaska agreed to purchase Virgin.

3. Although the codeshare agreement effectively extends Alaska's geographic reach—potentially strengthening Alaska's ability to compete against other carriers like Delta and United—it also creates an incentive for Alaska to cooperate rather than compete with its larger partner, American. Specifically, Alaska may choose not to launch new service on routes served by American, or it may opt to compete less aggressively on the routes that both carriers serve, to avoid upsetting American and jeopardizing the partnership. Alaska may also decide to rely on the codeshare relationship in lieu of entering routes already served by American because doing so allows it to offer its customers the benefits of an expanded network without undertaking the risk and expense of offering its own competing service. As a result of these incentives, Alaska and American often behave more like partners than competitors.

4. Alaska's acquisition of Virgin would significantly increase Alaska's network overlaps with American, and would thus dramatically increase the circumstances where the incentives created by the codeshare threaten to soften head-to-head competition. Roughly two-thirds of Virgin's network overlaps with American's network, and Virgin has aggressively competed with American on many of these overlap routes in ways that have forced American to respond with lower fares and better service.

5. The proposed acquisition would diminish Virgin's competitive impact on the Virgin-American overlap routes by subjecting Virgin's network to the incentives that arise from Alaska's codeshare agreement with American. Virgin holds critical assets, including gates and takeoff and landing rights (known as ''slots''), at key airports within American's network. American divested some of these assets to Virgin as part of the settlement of the United

States's antitrust challenge to American's 2013 merger with US Airways. Once Alaska controls the Virgin assets, it likely will redeploy them in ways that accommodate rather than challenge American in order to preserve its codeshare agreement. To avoid competing head-to-head with its codeshare partner, Alaska will likely reduce service, decrease service quality, and/or raise prices on the Virgin-American overlap routes—or exit them entirely. Alaska will also be less likely to enter new routes in competition with American than Virgin is today. These harms will be heightened if Alaska continues to deepen its cooperation with American, which would have the effect of tying the nation's first- and fifth-largest airlines even more closely together.

6. Alaska's internal planning documents demonstrate how the incentives created by the codeshare agreement would likely reduce competition on the routes where American and Virgin compete today. In analyzing the proposed merger, Alaska executives reported to the company's board of directors that certain Virgin operations ''would not have [the] support of the American partnership.'' Accordingly, early during the consideration process, Alaska executives developed a plan that called for changes ''that we think would need to be made'' to Virgin's service following the merger. The plan contemplated reducing or eliminating service on many of the routes where Virgin and American offer competing service today, including some of the most traveled routes in the country.

7. For these and the reasons discussed below, the proposed merger between Alaska and Virgin likely would lessen competition substantially in numerous U.S. markets for scheduled air passenger service in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be permanently enjoined.

II. Jurisdiction, Interstate Commerce, and Venue

8. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Alaska and Virgin from violating Section 7 of the Clayton Act, 15 U.S.C. 18. This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Defendants are engaged in, and their activities substantially affect, interstate commerce, and commerce throughout the United States. Alaska and Virgin each annually transport millions of passengers across state lines throughout this country, generating billions of dollars in revenue.

10. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b) and (c). This Court also has personal jurisdiction over each Defendant. Both Defendants are found and transact business, and have consented to venue and personal jurisdiction, in this District.

III. The Defendants and the Transaction

11. Defendant Alaska Air Group, Inc. is a Delaware corporation headquartered in Seattle, Washington. Last year, Alaska flew over 31 million passengers to approximately 112 locations worldwide, taking in more than $5.5 billion in revenue.

12. Alaska operates hubs in Seattle, Washington; Portland, Oregon; and Anchorage, Alaska, and has the largest share of traffic at each of these hubs. Alaska has maintained its status as the market share leader throughout the Pacific Northwest, which has helped Alaska achieve higher profit margins than most other domestic airlines for the past several years.

13. Defendant Virgin America Inc. is a Delaware corporation headquartered in Burlingame, California. Last year, Virgin America flew over 7 million passengers to approximately 24 locations worldwide, taking in more than $1.5 billion in revenue. Virgin America is one of several entities bearing the ''Virgin'' name pursuant to a licensing agreement with the Virgin Group, which owns approximately 18% of Virgin America's outstanding voting common stock.

14. Virgin America was founded in 2004. Unlike Alaska, Virgin does not have a hub-and-spoke network. Although Virgin has ''focus cities''—Los Angeles, San Francisco, and Dallas—from which it provides service to many destinations, Virgin does not use these focus cities as points for transferring large volumes of connecting traffic. Instead, the bulk of Virgin's passengers fly on nonstop flights in markets where Virgin is typically not the dominant carrier.

15. On April 1, 2016, Alaska and Virgin agreed to merge for $2.6 billion in cash and the assumption of $1.4 billion in liabilities.

IV. Competition Between American, Alaska, and Virgin Today

A. The Formation and Expansion of the Codeshare Relationship Between American and Alaska

16. Although codeshare agreements can take various forms, they generally allow for flights operated by one airline to be marketed and sold by another airline under the marketing airline's own brand. A codeshare agreement can extend an airline's network by enabling passengers to seamlessly book a connecting itinerary consisting of flights operated by different airlines. For example, a passenger seeking to fly from Walla Walla, Washington to Charlotte, North Carolina could purchase tickets for the entire trip through Alaska, using an Alaska flight from Walla Walla to Seattle that connects to an American flight from Seattle to Charlotte. This arrangement allows Alaska to rely on the codeshare agreement with American to offer service to Charlotte, instead of having to launch its own competing service between Seattle and Charlotte in order to serve the customer.

17. The codesharing partnership between Alaska and American began in 1999. The initial scope of the agreement was very limited: It allowed Alaska to market American's flights on only 88 routes where Alaska did not otherwise provide service, and did not permit American to market any Alaska flights. Since 1999, however, Alaska and American have repeatedly expanded their codeshare arrangement, enabling American to also market certain Alaska flights and increasing the number of flights each partner may sell on behalf of the other.

18. American and Alaska most recently expanded the codeshare agreement in April 2016, around the same time that Alaska was concluding its agreement to acquire Virgin. In agreeing to the amendment, Alaska chose to continue to expand its partnership with American even though it planned to grow its own network by acquiring Virgin. This April 2016 expansion further increased the number of routes included in the agreement, allowing Alaska to market American flights on over 250 routes, and American to market Alaska flights on about 80 routes.

19. The April 2016 expansion of the codeshare agreement also enabled American and Alaska to sell one another's flights on certain overlap routes where both companies offer competing nonstop service. Under this new arrangement, instead of strictly competing against one another to sell tickets between, for example, Seattle and Los Angeles, American and Alaska began selling each other's tickets for these routes as well. This type of codesharing on nonstop overlap routes, by definition, does not expand either airline's network. Instead, it provides them the opportunity to closely coordinate their service offerings on a

route where they would otherwise be competing at arm's length for business. Such close contact between competing airlines on routes they both serve can diminish competition and facilitate collusion.

B. The Codeshare Relationship Incentivizes Alaska To Cooperate Rather Than Compete With American

20. Today, Alaska is stronger than American in the Pacific Northwest, where American is comparatively weak, whereas American is stronger than Alaska throughout the rest of the United States. Through the codeshare agreement, Alaska offers its customers flights to more destinations, which helps Alaska retain the loyalty of frequent fliers who prefer to use one airline but want the ability to travel to domestic cities that Alaska does not serve independently. American derives similar benefits from the codeshare agreement—loyal American customers are provided greater ability to travel throughout the Pacific Northwest using Alaska's network.

21. Although the codeshare agreement provides both carriers commercial benefits by linking the Alaska and American networks, the agreement also makes Alaska dependent on American in a way that discourages competition between the two airlines. Specifically, American has significant leverage over Alaska because Alaska derives considerable value from using the American network to provide service throughout many areas of the United States it does not otherwise serve, while American relies on Alaska to provide access to far fewer destinations. To avoid undermining this lucrative partnership, Alaska may forego launching new service on routes served by American, or it may opt to compete less aggressively on the routes they both serve.

22. In addition, Alaska may choose to rely on the codeshare agreement in lieu of entering some routes already served by American because doing so allows it to offer its customers the benefits of an expanded network without undertaking the risk and expense of commencing its own competing service. By relying on an American flight to provide its customers service, Alaska can boast a more extensive network without actually launching service in competition with American. In essence, by choosing to rely on the codeshare agreement, Alaska is forgoing entry that would likely provide lower prices and more flight options to consumers.

23. The incentives created by the codeshare agreement are illustrated by the five-year growth plan that Alaska prepared prior to agreeing to acquire Virgin. The plan envisioned further cooperation between Alaska and American, calling for Alaska to ''strengthen the [American] partnership by trying to grow LA in a way that is complimentary [*sic*] to AA rather than competitive.'' But competitors are supposed to compete with, not complement, each other. Alaska would likely continue this strategy of avoiding growth that challenges American if it were to complete the merger. When Alaska was weighing whether to acquire Virgin, for example, a senior Alaska executive recognized that ''LAX . . . expansion may be counterproductive to our relationship with AA.''

C. Unhindered by a Codeshare Relationship, Virgin Competes Aggressively With American

24. In contrast to Alaska, Virgin has served as one of American's fiercest competitors. Virgin competes directly with American on twenty nonstop routes, which constitute approximately two-thirds of Virgin's entire network. In total, passengers spend about $8 billion per year to travel on these routes.

25. Virgin and American vigorously compete on so many nonstop routes in part because Virgin controls critical assets in cities where American maintains a hub. These assets include gates and/or takeoff and landing rights at airports such as Los Angeles International Airport, Washington Reagan National Airport, and Dallas Love Field. Virgin's presence at these important airports provides a critical alternative for consumers and helps keep American's prices lower than they otherwise would be.

26. Virgin's ownership of these assets and aggressive competition with American is no coincidence—consumers were promised the benefits of expanded Virgin service to counteract the anticompetitive effects threatened by the 2013 merger between American and US Airways. To resolve the United States's challenge to that merger, American agreed to divest a host of critical assets to low-cost competitors, including Virgin, at key U.S. airports. As contemplated by the settlement, Virgin has used the assets to compete directly with American. For instance, Virgin has utilized the two airport gates it acquired at Dallas Love Field to launch aggressive new service against American, forcing American to respond with lower prices. Virgin has estimated that its entry at Love Field caused American to lower certain fares on flights out of Dallas by more than 50%.

V. The Relevant Markets

27. Scheduled air passenger service enables consumers to travel quickly and efficiently between various cities in the United States. Air travel offers passengers significant time savings and convenience over other forms of travel. For example, a flight from Washington, DC to Detroit takes just over an hour of flight time. Driving between the two cities takes at least eight hours. A train between the two cities takes more than fifteen hours.

28. Due to time savings and convenience afforded by scheduled air passenger service, few passengers would substitute other modes of transportation (car, bus, or train) for scheduled air passenger service in response to a small but significant industry-wide fare increase. Another way to say this, as described in the Department of Justice and Federal Trade Commission's *Horizontal Merger Guidelines* (2010), and endorsed by courts in this Circuit, is that a hypothetical monopolist of all scheduled air passenger service likely would increase its prices by at least a small but significant and non-transitory amount. Scheduled air passenger service, therefore, constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

29. Moreover, most passengers book flights with their origins and destinations predetermined. Few passengers who wish to fly from one city to another would switch to flights between other cities in response to a small but significant and non-transitory fare increase. A hypothetical monopolist of all scheduled air passenger service on any particular route between two destinations likely would be able to profitably increase its prices by at least a small but significant and non-transitory amount. Accordingly, scheduled air passenger service between each origin and destination pair constitutes a line of commerce and section of the country under Section 7 of the Clayton Act.

30. Scheduled air passenger service on those twenty routes on which Virgin and American compete today, and the routes on which they would have likely competed in the future, are relevant markets within the meaning of Section 7 of the Clayton Act.

VI. The Transaction's Likely Anticompetitive Effects

A. The Merger Is Likely To Lessen Competition on the Routes Where Virgin and American Compete Today

31. Alaska's acquisition of Virgin's network will extend the incentives

created by the codeshare agreement to the extensive overlaps between Virgin and American, and will therefore reduce the vigorous competition that Virgin is presently providing against American on some of the nation's largest nonstop routes. Specifically, the merger is likely to substantially lessen competition on each of the twenty nonstop routes on which Virgin and American currently compete because Alaska will have an incentive to avoid aggressive head-to-head competition in order to preserve its codeshare relationship with American. Once Alaska has control of Virgin, it is likely to reduce capacity, decrease service quality, and/or raise prices on these routes. In some cases, Alaska may completely stop serving the routes with its own flights, instead simply marketing American's flights between the destinations, thereby eliminating a meaningful competitive choice for millions of consumers.

32. Alaska itself has recognized that its acquisition of Virgin's assets will likely reduce competition on the Virgin-American overlap routes. As part of Alaska's early analysis of a possible acquisition of Virgin, Alaska executives developed a plan for post-merger changes to Virgin's service that specifically called for reducing—and in some instances completely eliminating—service on many of the routes where Virgin and American compete today, including routes that are among the most heavily traveled in the country. If carried out, these service reductions would not only cost consumers tens of millions of dollars each year, they would deprive consumers of some of the competitive benefits enabled by the American-US Airways merger settlement.

B. The Merged Firm Will Be Less Likely To Enter Into New Competition With American Than Virgin Would Be Standing Alone

33. Alaska's acquisition of Virgin will also lessen competition because Alaska is likely to enter fewer new routes in competition with American post-merger than Virgin would if Virgin remained a standalone airline. Alaska may avoid entering a route in competition with American for two reasons related to the codeshare: (1) It will fear endangering its lucrative relationship with American, and (2) it can already offer tickets on the route through the codeshare agreement. Virgin has no such inhibitions. In fact, Virgin's standalone growth plan called for the airline to enter several nonstop routes currently served by American but not Alaska. Alaska presently relies on its codeshare relationship with American to serve some of these routes, as well as others that may have been served by an independent Virgin in the future. Post-merger, Virgin's independent decision-making will be lost, and Alaska may avoid entering these types of routes. As a result, consumers will be deprived of the benefits of the future competition that Virgin would have provided.

VII. Absence of Countervailing Factors

34. New entry, or expansion by existing competitors, is unlikely to prevent or remedy the merger's likely anticompetitive effects. New entrants into a particular market face significant barriers to success, including difficulty in obtaining access to slots and gate facilities; the effects of corporate discount programs offered by dominant incumbents; loyalty to existing frequent flyer programs; an unknown brand; and the risk of aggressive responses to new entry by the dominant incumbent carrier. In addition, entry is highly unlikely on routes where the origin or destination airport is another airline's hub, because the new entrant would face substantial challenges attracting sufficient local passengers to support service.

35. Defendants cannot demonstrate acquisition-specific and cognizable efficiencies that would offset the proposed acquisition's likely anticompetitive effects.

VIII. Violation Alleged

36. The United States hereby incorporates the allegations of paragraphs 1 through 35 above as if set forth fully herein.

37. The effect of the proposed merger, if approved, likely will be to lessen competition substantially, or tend to create a monopoly, in interstate trade and commerce in the numerous U.S. markets for scheduled air passenger service identified above, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

38. Unless enjoined, the proposed merger likely would have the following effects in the relevant markets, among others:

(a) Actual and potential competition in the relevant markets would be eliminated, including competition between Virgin and American;

(b) ticket prices and other fees would be higher than they otherwise would;

(c) industry capacity would be lower than it otherwise would; and

(d) service quality would be lessened.

IX. Request for Relief

39. Plaintiff requests:

(a) That Alaska's proposed merger with Virgin be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) that Defendants be permanently enjoined from and restrained from carrying out the planned merger of Alaska and Virgin or any other transaction that would combine the two companies;

(c) that Plaintiff be awarded its costs of this action; and

(d) that Plaintiff be awarded such other relief as the Court may deem just and proper.

Dated: December 6, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Alaska Air Group, Inc.* and *Virgin America Inc.,* Defendants.

Case No.: 1:16–cv–02377.
Judge: Reggie B. Walton.
Filed: 12/06/2016.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section

2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 4, 2016, Alaska Air Group, Inc. (''Alaska''), the sixth-largest domestic airline, agreed to acquire Virgin America, Inc. (''Virgin''), the ninth-largest domestic airline, for $2.6 billion in cash and the assumption of $1.4 billion in liabilities.

The airline industry in the United States is dominated by four large airlines—American Airlines, Delta Air Lines, United Airlines, and Southwest Airlines—that collectively account for over 80% of domestic air travel each year. In this highly-concentrated industry, the smaller airlines play a critical competitive role. In order to compete with the four largest airlines, these smaller airlines often must offer consumers lower fares, additional flight options, and innovative services.

Although Alaska would become only the fifth-largest domestic airline as a result of the proposed merger, its extensive codeshare agreement with the largest domestic airline, American, threatens to blunt important competition supplied by Virgin today. A codeshare agreement is a commercial relationship that allows each airline to market tickets for certain flights on the other's network. Although the codeshare agreement effectively extends Alaska's geographic reach—potentially strengthening Alaska's ability to compete against other carriers like Delta and United—it also creates an incentive for Alaska to cooperate rather than compete with American.

Alaska's acquisition of Virgin would significantly increase Alaska's network overlaps with American, and would thus dramatically increase the circumstances where the incentives created by the codeshare threaten to soften head-to-head competition. Roughly two-thirds of Virgin's network overlaps with American's network, and Virgin has aggressively competed with American on many of these overlap routes in ways that have forced American to respond with lower fares and better service. Unless the codeshare is substantially modified, the proposed merger would diminish the important competition Virgin has provided on these routes.

On December 6, 2016, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition. The Complaint alleges that Defendants' proposed merger would likely lessen competition substantially for scheduled air passenger service in numerous markets throughout the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Specifically, the Complaint alleges that following the merger, Alaska, as a result of its extensive codesharing relationship with American, would likely exit or compete less aggressively on routes where Virgin and American compete today, and would be less likely to enter new routes in competition with American in the future than Virgin would be standing alone.

At the same time the Complaint was filed, the United States filed a Stipulation and Order and proposed Final Judgment, which are designed to eliminate the likely anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Alaska would be obligated to substantially reduce the scope of its codeshare agreement with American in order to enhance Alaska's incentive to compete with American after the merger.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Transaction

Defendant Alaska Air Group, Inc. is a Delaware corporation headquartered in Seattle, Washington. Last year, Alaska flew over 31 million passengers to approximately 112 locations worldwide, taking in more than $5.5 billion in revenue. Alaska operates hubs in Seattle, Washington; Portland, Oregon; and Anchorage, Alaska, and has the largest share of traffic at each of these hubs.

Defendant Virgin America Inc. is a Delaware corporation headquartered in Burlingame, California. Last year, Virgin America flew over 7 million passengers to approximately 24 locations worldwide, taking in more than $1.5 billion in revenue. Virgin America is one of several entities bearing the ''Virgin'' name pursuant to a licensing agreement with the Virgin Group, which owns approximately 18% of Virgin America's outstanding voting common stock.

Virgin America was founded in 2004. Unlike Alaska, Virgin does not have a hub-and-spoke network. Although Virgin has ''focus cities''—Los Angeles, San Francisco, and Dallas—from which it provides service to many destinations, Virgin does not use these focus cities as points for transferring large volumes of connecting traffic. Instead, the bulk of Virgin's passengers fly on nonstop flights in markets where Virgin is typically not the dominant carrier.

On April 1, 2016, Alaska and Virgin agreed to merge for $2.6 billion in cash and the assumption of $1.4 billion in liabilities.

B. Alaska's Codeshare Agreement With American

Although codeshare agreements can take various forms, they generally allow for flights operated by one airline to be marketed and sold by another airline under the marketing airline's own brand. A codeshare agreement can extend an airline's network by enabling passengers to seamlessly book a connecting itinerary consisting of flights operated by different airlines. For example, a passenger seeking to fly from Walla Walla, Washington to Charlotte, North Carolina could purchase tickets for the entire trip through Alaska, using an Alaska flight from Walla Walla to Seattle that connects to an American flight from Seattle to Charlotte. This arrangement allows Alaska to rely on the codeshare agreement with American to offer service to Charlotte, instead of having to launch its own competing service between Seattle and Charlotte in order to serve the customer.

The codesharing partnership between Alaska and American began in 1999. The initial scope of the parties' codeshare agreement was very limited: it allowed Alaska to market American's flights on only 88 routes where Alaska did not otherwise provide service, and did not permit American to market any Alaska flights. Since 1999, however, Alaska and American have repeatedly expanded their codeshare arrangement, enabling American to also market certain Alaska flights and steadily increasing the number of flights each partner may sell on behalf of the other. American and Alaska most recently expanded the codeshare agreement in April 2016. As a result of the most recent expansion, Alaska is able to market American flights on over 250 routes, and American is able to market Alaska flights on about 80 routes. The April 2016 expansion also enabled American and Alaska to sell one another's flights on certain overlap routes where both companies offer competing nonstop service.

C. Virgin's Aggressive Competition With American

Virgin has served as one of American's fiercest competitors. Virgin competes directly with American on twenty nonstop routes, which constitute approximately two-thirds of Virgin's entire network. These twenty routes represent about $8 billion in commerce annually.

Virgin and American vigorously compete on numerous nonstop routes in part because Virgin controls critical assets in cities where American maintains a hub. These assets include gates and/or takeoff and landing rights at airports including Washington Reagan National Airport, Dallas Love Field, and Los Angeles International Airport. Virgin's presence in these markets provides a critical alternative for consumers and helps keep American's prices lower than they otherwise would be.

Virgin's ownership of many of these assets and aggressive competition with American is no coincidence—consumers were promised the benefits of expanded Virgin service to counteract the anticompetitive effects threatened by the 2013 merger between American and US Airways. To resolve the United States's challenge to that merger, American agreed to divest a host of critical assets at key airports where the two firms had a significant presence to low-cost competitors, including Virgin. *See* Final Judgment, *United States* v. *US Airways Group, Inc.,* Case No. 1:13–cv–01236 (CKK) (Dkt. No. 170) (D.D.C. Apr. 25, 2014). As contemplated by the settlement, Virgin has used the assets to compete directly with American. For instance, Virgin has utilized the two airport gates it acquired at Dallas Love Field to launch aggressive new service against American, forcing American to respond with lower prices. Virgin has estimated that its entry at Love Field caused American to lower certain fares on flights out of Dallas by more than 50%.

D. The Transaction's Likely Anticompetitive Effects

1. Relevant Markets

As alleged in the Complaint, scheduled air passenger service enables consumers to travel quickly and efficiently between various cities in the United States. Air travel offers passengers significant time savings and convenience over other forms of travel. For example, a flight from Washington, DC to Detroit takes just over an hour of flight time. Driving between the two cities takes at least eight hours. A train between the two cities takes more than fifteen hours.

Due to time savings and convenience afforded by scheduled air passenger service, few passengers would substitute other modes of transportation (car, bus, or train) for scheduled air passenger service in response to a small but significant industry-wide fare increase. Another way to say this, as described in the Department of Justice and Federal Trade Commission's *Horizontal Merger Guidelines* (2010), and endorsed by courts in this Circuit, is that a hypothetical monopolist of all scheduled air passenger service could profitably increase its prices by at least a small but significant and non-transitory amount. The Complaint alleges, therefore, that scheduled air passenger service constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Moreover, most passengers book flights with their origins and destinations predetermined. Few passengers who wish to fly from one city to another would switch to flights between other cities in response to a small but significant and non-transitory fare increase. A hypothetical monopolist of all scheduled air passenger service on any particular route between two destinations likely would be able to profitably increase its prices by at least a small but significant and non-transitory amount. Accordingly, scheduled air passenger service between each origin and destination pair constitutes a line of commerce and section of the country under Section 7 of the Clayton Act.

The Complaint alleges that scheduled air passenger service on those twenty routes on which Virgin and American compete today, and the routes on which they would have likely competed in the future, are relevant markets within the meaning of Section 7 of the Clayton Act.

2. Competitive Effects

The codeshare agreement between Alaska and American creates an incentive for Alaska to cooperate rather than compete with American. Alaska's acquisition of Virgin's network would extend this incentive to the extensive overlaps between Virgin and American, and will therefore likely reduce the vigorous competition that Virgin is presently providing against American. Specifically, the Complaint alleges that the merger is likely to substantially lessen competition on each of the twenty nonstop routes on which Virgin and American currently compete because Alaska will have an incentive to avoid aggressive head-to-head competition in order to preserve its codeshare relationship with American. Once Alaska has control of Virgin, it is likely to reduce capacity, decrease service quality, and/or raise prices on these routes. In some cases, Alaska may completely stop serving the routes with its own flights, and instead simply market American's flights between the destinations, thereby eliminating an independent and meaningful competitive choice for millions of consumers. The Complaint further alleges that Alaska's acquisition of Virgin will likely lessen competition because Alaska is likely to enter fewer new routes in competition with American than Virgin would if Virgin remained a standalone airline.

3. Entry and Expansion

As alleged in the Complaint, new entry, or expansion by existing competitors, is unlikely to prevent or remedy the merger's likely anticompetitive effects. New entrants into a particular market face significant barriers to success, including difficulty in obtaining access to slots and gate facilities; the effects of corporate discount programs offered by dominant incumbents; loyalty to existing frequent flyer programs; an unknown brand; and the risk of aggressive responses to new entry by the dominant incumbent carrier. In addition, entry is highly unlikely on routes where the origin or destination airport is another airline's hub, because the new entrant would face substantial challenges attracting sufficient local passengers to support service.

III. Explanation of the Proposed Final Judgment

As alleged in the Complaint, Alaska's acquisition of Virgin threatens to substantially lessen competition on the routes where Virgin and American compete today, and would likely compete in the future, because Alaska's existing codeshare agreement with American creates significant incentives for Alaska to reduce—or eliminate—its competition with American on these routes.

The codeshare agreement incentivizes Alaska to avoid competition with American in two ways. First, the overall scale of the codeshare agreement and Alaska's dependence on it creates an incentive for Alaska to compete less aggressively with American in order to avoid upsetting American and jeopardizing the codeshare partnership. Second, the opportunity to market American's flights on particular routes creates an incentive for Alaska to rely on the codeshare to provide service to

its customers rather than undertaking the risk and expense of initiating its own service. Alaska's acquisition of Virgin would significantly increase Alaska's network overlaps with American, and would thus dramatically increase the circumstances where these incentives threaten to soften head-to-head competition.

As explained in more detail below, the relief set forth in the ''Prohibited Conduct'' section of the proposed Final Judgment would substantially reduce each of these incentives. First, through prohibitions on codesharing in a variety of circumstances, it would substantially reduce the overall size and scope of the codeshare partnership between Alaska and American, which, in turn, would decrease Alaska's reliance on the codeshare and enhance Alaska's incentive to compete on those routes where Virgin and American compete today. Second, it would prohibit Alaska from substituting to codeshare service on routes that Virgin already serves or would otherwise be likely to serve.

At the same time, because the codeshare between Alaska and American may benefit consumers in some circumstances by enabling Alaska and American to offer their customers service that neither airline would provide on its own, the proposed Final Judgment does not categorically prohibit all codesharing. Instead, the proposed Final Judgment focuses on reducing codesharing where it is likely to blunt Alaska's incentives to compete with American after the merger.

In addition, the proposed Final Judgment provides protections for the assets that Virgin acquired from American as part of the settlement of the lawsuit challenging the merger of American and US Airways to ensure the continued use of these assets in competition with American. Finally, the proposed Final Judgment includes notification, monitoring, and enforcement provisions so that Defendants comply with all of their obligations.

A. By Prohibiting Codesharing in Certain Circumstances, the Proposed Final Judgment Incentivizes the Merged Firm To Compete Aggressively

To reduce Alaska's dependence on the codeshare agreement with American, Section IV.A of the proposed Final Judgment requires Alaska to cease codesharing in four different scenarios no later than sixty days after the closing of the transaction. Together, the restrictions on codesharing will reduce by approximately 50% the volume of Alaska passengers flying on American flights.

First, Section IV.A.1 of the proposed Final Judgment prohibits Alaska and American from codesharing on routes where Virgin and American both offer competing nonstop service today, irrespective of network changes that either carrier makes in the future. By eliminating Alaska's ability to replace Virgin's service with codeshare flights on American, this provision will ensure that if Alaska wishes to offer its customers service on these routes, it will need to continue to compete head-to-head with American as Virgin does today.

Second, Section IV.A.2 of the proposed Final Judgment further reduces the overall scope of the codeshare relationship by prohibiting codesharing on all routes on which Alaska and American both offer competing nonstop service. Prohibiting codesharing on the Virgin/American overlap routes alone is insufficient to prevent harm from the merger because Alaska would retain the broader incentive to avoid endangering the partnership and could still choose to reduce or eliminate service on the routes where Virgin and American compete today. To adequately address this broader incentive, the proposed Final Judgment also prohibits codesharing on Alaska/American overlap routes because, as previously recognized by both the U.S. Department of Transportation and the Department of Justice, such codesharing can diminish competition and facilitate collusion by, for example, creating opportunities for the airlines to communicate about fares and closely coordinate their service offerings. Such codesharing is also especially unlikely to benefit consumers because it does not extend the reach of either carrier's network.

Third, in order to ensure that Alaska uses the Virgin assets to grow in ways that continue to enhance competition following the merger, the proposed Final Judgment prohibits Alaska from marketing American flights on routes that it is most likely to serve itself and prohibits Alaska from permitting American to market Alaska flights on routes that American is most likely to serve itself. Airlines are most likely to enter routes that emanate from one of their hubs or focus cities, and thus, Section IV.A.3 of the proposed Final Judgment prevents both Alaska and American from marketing each other's flights on routes that touch their respective hubs or focus cities, defined as ''Key Alaska Airports'' and ''Key American Airports'' in Definitions II.L and II.M of the proposed Final Judgment, respectively.

Finally, Los Angeles International Airport (''LAX''), which is not included as a ''Key Alaska Airport'' or ''Key American Airport,'' is a special case because both carriers will have significant operations at this airport post-merger. If Section IV.A.3 applied to LAX, it would eliminate all codesharing at this airport, including potentially beneficial codesharing on routes the two airlines would be unlikely to serve independently. Section IV.A.4 of the proposed Final Judgment therefore prohibits either carrier from codesharing on routes between LAX and either an American or Alaska hub or focus city, as the airlines are more likely to serve these routes on a standalone basis, but allows for codesharing on routes between LAX and other cities.

B. The Proposed Final Judgment Provides Additional Protections for Assets American Divested to Virgin as Part of the American–US Airways Merger Settlement

As alleged in the Complaint, Virgin aggressively competes with American on several routes using assets that American divested to Virgin to settle the United States's challenge to American's 2013 merger with US Airways. These assets, which include gates and takeoff and landing rights (known as ''slots''), are located at constrained airports in several of American's strongholds. Although the proposed Final Judgment strongly incentivizes Alaska to continue competing with American on routes that Virgin serves today through limitations on codesharing, Alaska may decide for independent reasons that these assets do not fit into its business or network plans and seek to sell or lease them to another carrier. Section IV.B of the proposed Final Judgment prohibits Alaska from allowing American to acquire or use the assets, which would circumvent the purpose of the American/US Airways settlement. In addition, Section IV.B of the proposed Final Judgment requires Alaska to obtain the United States's approval of a buyer or lessee if the combined company chooses to sell or lease these assets to a carrier other than American. This provision allows the United States to ensure that American does not have undue influence over the disposition of these assets. Section IV.C of the proposed Final Judgment permits Alaska to allow another airline to use the assets in limited circumstances that are routine, short-term, or necessary for operational or safety reasons and thus highly unlikely to harm competition—for example, when an airport orders Alaska to permit another airline to use an asset to prevent a potentially dangerous situation. Section IV.C also

permits Alaska to make one-for-one trades of slots or gates at the same airport, which is also highly unlikely to harm competition.

C. The Proposed Final Judgment Includes Robust Notification, Monitoring, and Enforcement Provisions

The proposed Final Judgment includes several provisions designed to allow the United States to assess the implementation and effectiveness of the proposed Final Judgment and ensure Alaska's compliance with its requirements. To this end, Section V.A requires Defendants to inform pertinent personnel of the Defendants' obligations under the proposed Final Judgment. Section V.B requires Defendants to comply with Section IV.A.2 no later than sixty days after Alaska or American enters a new route that creates a new competitive overlap. Section V.D of the proposed Final Judgment imposes annual reporting requirements regarding the scope of the codeshare relationship, including the identity of the routes subject to the codeshare, the number of passengers that have purchased tickets pursuant to the codeshare, and the amount of revenue Alaska has received from the codeshare. Section V.E also requires Alaska to notify the United States in advance if Alaska seeks to modify its contractual relationship with American as a means of providing the United States an opportunity to take action if the modification would threaten competition. In addition, Section VII of the proposed Final Judgment expressly reserves the right of the United States to take enforcement action to enjoin the codeshare agreement should changes in the competitive landscape or the networks or incentives of these airlines warrant such action.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of the judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Kathleen O'Neill, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have sought preliminary and permanent injunctions against Alaska's acquisition of Virgin. The United States is satisfied, however, that the remedies described in the proposed Final Judgment will effectively address the transaction's likely anticompetitive effects and preserve competition for the provision of scheduled air passenger service in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id. at § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *US Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting that the court's ''inquiry is limited'' because the government has ''broad discretion'' to determine the adequacy of the relief secured through a settlement); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed

remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court conducting inquiry under the APPA may consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also US Airways,* 8 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also US Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also US Airways,* 38 F. Supp 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (concluding that ''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in government antitrust enforcement actions, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also US Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language codified what Congress intended when it enacted the Tunney Act in 1974, as, Senator Tunney, the author of this legislation, unambiguously explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *US Airways,* 38 F. Supp. 3d at 76.[3]

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in

Continued

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 6, 2016

Respectfully submitted,

_____/s/_____

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U.S. Department of Justice
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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Alaska Air Group, Inc.* and *Virgin America Inc.*, Defendants.

Case No.: 1:16–cv–02377.
Judge: Reggie B. Walton,
Filed: 12/06/2016,

Proposed Final Judgment

Whereas, Plaintiff United States of America (''United States'') filed its Complaint on December 6, 2016, the United States and Defendants, Alaska Air Group, Inc. (''Alaska'') and Virgin America Inc. (''Virgin''), by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issues of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, this Final Judgment requires Defendants to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

and whereas, Defendants have represented to the United States that the actions and conduct restrictions described below can and will be undertaken, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any provisions contained below;

Now, therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of this action and Defendants. The Complaint states a claim upon which relief can be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Alaska'' means Alaska Air Group, Inc., a Delaware corporation headquartered in Seattle, Washington, its successors and assigns, its Affiliates, and its subsidiaries or divisions, and their respective directors, officers, managers, agents, and employees.

B. ''Alaska/American Codeshare Agreement'' means the Amended and Restated Codeshare Agreement entered into between Alaska and American, dated February 15, 2015, and all predecessors, exhibits, schedules and amendments thereto.

C. ''Alaska/American Overlap Routes'' means any routes between two cities in the United States on which Alaska and American both provide nonstop scheduled air passenger service. For purposes of this definition only, the city that an airport serves will be determined by the City Market ID assigned to each airport by the U.S. Department of Transportation in the Airline Origin and Destination Survey (''DB1B''), and airports with the same City Market ID will be considered to serve the same city, except the following airports will not be considered to serve the same city as any other airport: (1) Los Angeles International Airport and (2) Norman Y. Mineta San Jose International Airport. The routes covered by this definition may change over the term of this Final Judgment as Alaska and American adjust their respective schedules. The Alaska/American Overlap Routes as of December 6, 2016 are listed in Appendix A for illustrative purposes.

D. ''American'' means American Airlines Group Inc., a Delaware corporation headquartered in Fort Worth, Texas, its successors and assigns, and its subsidiaries, divisions, groups and Affiliates, and their respective directors, officers, managers, agents, and employees.

E. ''Affiliate'' means an entity that is related to another entity by one owning shares of the other, by common ownership, or by other means of control, and includes any airline that operates Flights for Alaska or American pursuant to a capacity purchase agreement, but such airline shall only be deemed an Affiliate with respect to such Flights.

F. ''Codeshare Agreement'' means a contract between two airlines that allows them to market one another's flights by placing their respective unique, identifying codes on those flights. Each airline's code is established by the International Air Transportation Association.

G. ''Connecting Itinerary'' means a route within the United States with at least one intermediate stop at any airport between the origination and destination airports.

H. ''Defendants'' means Alaska and Virgin, and any successor or assignee to all or substantially all of the business or assets of Alaska or Virgin.

I. ''US/AA Divestiture Assets'' means all rights and interests held by Defendants in the two gates at Dallas Love Field (''DAL''), eight slots at Washington Reagan National Airport (''DCA''), and 12 slots at New York LaGuardia Airport (''LGA''), acquired by Virgin pursuant to the Final Judgment entered in *United States* v. *US Airways Group, Inc.,* Case No. 1:13–cv–01236 (CKK) (Dkt. No. 170) (D.D.C. Apr. 25, 2014).

J. ''Flight'' means scheduled air passenger service, without any intermediate stops, between an origin airport and destination airport, both within the United States.

K. ''Future Alaska-American Overlap Route'' means any Alaska-American Overlap Route created by Defendants or American commencing service between two cities after the consummation of the Transaction.

L. ''Key Alaska Airports'' means each of the following airports: (1) Portland International Airport (''PDX''); (2) Seattle-Tacoma International Airport (''SEA''); (3) San Francisco International Airport (''SFO''); and (4) Ted Stevens Anchorage International Airport (''ANC'').

M. ''Key American Airports'' means each of the following airports: (1) Charlotte Douglas International Airport (''CLT''); (2) Chicago Midway International Airport (''MDW''); (3) Chicago O'Hare International Airport (''ORD''); (4) Dallas/Fort Worth International Airport (''DFW''); (5) Dallas Love Field (''DAL''); (6) Fort Lauderdale-Hollywood International Airport (''FLL''); (7) John F. Kennedy International Airport (''JFK''); (8) Miami International Airport (''MIA''); (9) New York LaGuardia Airport (''LGA''); (10) Philadelphia International Airport (''PHL''); (11) Phoenix Sky Harbor International Airport (''PHX''); and (12)

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making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Washington Reagan National Airport (''DCA'').

N. ''LAX'' means Los Angeles International Airport.

O. ''Market'' means to sell tickets for a Flight pursuant to a Codeshare Agreement, either as a standalone Flight or as part of a Connecting Itinerary.

P. ''Transaction'' means the transaction referred to in the Agreement and Plan of Merger by and among Alaska, Alpine Acquisition Corp., a wholly owned subsidiary of Alaska, and Virgin, dated April 1, 2016.

Q. ''Virgin'' means Virgin America Inc., a Delaware corporation headquartered in Burlingame, California, its successors and assigns, and its subsidiaries, divisions, groups, Affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

R. ''Virgin/American Overlap Routes'' means any routes on which Virgin and American both provide nonstop scheduled air passenger service as of December 6, 2016. The Virgin/American Overlap Routes are listed in Appendix B and will not change over the term of this decree.

III. Applicability

A. This Final Judgment applies to Alaska and Virgin, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

A. Beginning sixty (60) calendar days after consummation of the Transaction, Defendants shall not directly or indirectly, under the Alaska/American Codeshare Agreement or otherwise:

1. Market any American Flight serving a Virgin/American Overlap Route, or permit American to Market any Alaska Flight serving a Virgin/American Overlap Route;

2. Market any American Flight serving an Alaska/American Overlap Route, or permit American to Market any Alaska Flight serving an Alaska/American Overlap Route;

3. Market any American Flight that originates or terminates at any Key Alaska Airport, or permit American to Market any Alaska Flight that originates or terminates at any Key American Airport; and

4. Market any American Flight, or permit American to Market any Alaska Flight, serving any route between LAX and a Key Alaska Airport or a Key American Airport.

B. Defendants shall not directly or indirectly sell, trade, lease, or sub-lease any of the US/AA Divestiture Assets without the prior written consent of the United States. Defendants shall not directly or indirectly transfer any interest in the US/AA Divestiture Assets to American or permit American to use the US/AA Divestiture Assets.

C. Notwithstanding Section IV.B, nothing in this Final Judgment shall prevent Defendants from (i) engaging in one-for-one trades of slots at different times at the same airport, (ii) engaging in one-for-one trades of gates at the same airport, (iii) continuing the subleases of the US/AA Divestiture Assets already in place as of December 6, 2016; (iv) permitting any airline to use any slots or airport gates if required by lawful directive of an airport authority or any other governmental body; or (v) permitting any airline to use any slots or airport gates on an ad hoc basis to accommodate a safety, security, or exigent operational need.

V. Required Conduct

A. Within thirty (30) calendar days of entry of this Final Judgment, Defendants shall certify to the United States that they have informed (i) all of Defendants' personnel involved in the implementation, operation, and enforcement of the Alaska/American Codeshare Agreement and (ii) all of Defendants' officers and directors of the obligations set forth in this Final Judgment.

B. Within sixty (60) calendar days of the creation of a Future Alaska/American Overlap Route, Defendants shall comply with the prohibition set forth in Section IV.A(2) on that Future Alaska/American Overlap Route.

C. Defendants shall certify to the United States annually on the anniversary date of the entry of this Final Judgment that Defendants have complied with all of the provisions of this Final Judgment.

D. Defendants shall notify the United States annually on the anniversary date of the entry of this Final Judgment of:

1. The identity of routes on which Alaska Markets American Flights, and separately for each route, whether Alaska Markets American Flights on a standalone basis, as part of a Connecting Itinerary, or both;

2. The number of passengers that purchased tickets pursuant to the Alaska/American Codeshare Agreement or any other Codeshare Agreement between Alaska and American for American Flights Marketed by Alaska during the prior calendar year; and

3. The amount of revenue that Alaska received during the previous calendar year from American pursuant to the Alaska/American Codeshare Agreement.

E. If Defendants amend the Alaska/American Codeshare Agreement or enter into any new or restated Codeshare Agreement with American, Defendants shall provide a copy of such amendment or agreement to the United States at least thirty (30) calendar days in advance of such amendment or agreement becoming effective, unless the United States agrees in writing that Defendants may make such agreement(s) or amendment(s) effective at an earlier date. Defendants shall satisfy the obligations set forth in parts A, C, D, and E of this Section by providing the required certifications, notifications, and copies of agreements to the Chief of the Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice.

VI. Compliance and Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the

executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions as necessary to prevent or restrain violations of the antitrust laws relating to the Alaska/American Codeshare Agreement, or any past, present, or future conduct, policy, practice or agreement of Defendants.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

X. Public Interest Determination

The entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest

DATED:_____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge _____

Appendix A

ALASKA/AMERICAN DOMESTIC U.S. OVERLAP ROUTES AS OF DECEMBER 6, 2016

Non-directional origin and destination pairs

Origin	Destination
Ted Stevens Anchorage International Airport	Los Angeles International Airport.
Ted Stevens Anchorage International Airport	Phoenix Sky Harbor International Airport.
Chicago O'Hare International Airport	Portland International Airport.
Chicago O'Hare International Airport	Seattle—Tacoma International Airport.
Dallas/Fort Worth International Airport	Portland International Airport.
Dallas/Fort Worth International Airport	Seattle—Tacoma International Airport.
Los Angeles International Airport	Portland International Airport.
Los Angeles International Airport	Salt Lake City International Airport.
Los Angeles International Airport	Seattle—Tacoma International Airport.
John F. Kennedy International Airport	Seattle—Tacoma International Airport.
Philadelphia International Airport	Seattle—Tacoma International Airport.
Phoenix Sky Harbor International Airport	Seattle—Tacoma International Airport.
Phoenix Sky Harbor International Airport	Portland International Airport.
Ronald Reagan Washington National Airport	Los Angeles International Airport.
Baltimore—Washington International Airport	Los Angeles International Airport.
Newark Liberty International Airport	Seattle—Tacoma International Airport.
John F. Kennedy International Airport	San Diego International Airport.
Newark Liberty International Airport	San Diego International Airport.
Miami International Airport	Seattle—Tacoma International Airport.
Fort Lauderdale–Hollywood International Airport	Seattle—Tacoma International Airport.
Washington Dulles International Airport	Los Angeles International Airport.

Appendix B

VIRGIN/AMERICAN DOMESTIC U.S. OVERLAP ROUTES

Non-directional origin and destination pairs

Origin	Destination
Boston Logan International Airport	Los Angeles International Airport.
Chicago O'Hare International Airport	Los Angeles International Airport.
Dallas Love Field Airport	Los Angeles International Airport.
Dallas/Fort Worth International Airport	Los Angeles International Airport.
Fort Lauderdale—Hollywood International Airport	Los Angeles International Airport.
Los Angeles International Airport	Miami International Airport.
Honolulu International Airport	Los Angeles International Airport.

VIRGIN/AMERICAN DOMESTIC U.S. OVERLAP ROUTES—Continued

Non-directional origin and destination pairs	
Origin	Destination
McCarran International Airport	Los Angeles International Airport.
Los Angeles International Airport	Washington Dulles International Airport.
Los Angeles International Airport	Ronald Reagan Washington National Airport.
Los Angeles International Airport	John F. Kennedy International Airport.
Los Angeles International Airport	Newark Liberty International Airport.
Los Angeles International Airport	Orlando International Airport.
Los Angeles International Airport	Seattle—Tacoma International Airport.
Dallas Love Field Airport	San Francisco International Airport.
Dallas/Fort Worth International Airport	San Francisco International Airport.
Fort Lauderdale—Hollywood International Airport	San Francisco International Airport.
Miami International Airport	San Francisco International Airport.
John F. Kennedy International Airport	San Francisco International Airport.
Los Angeles International Airport	San Francisco International Airport.
Chicago O'Hare International Airport	San Francisco International Airport.
Dallas Love Field Airport	Ronald Reagan Washington National Airport.
Dallas/Fort Worth International Airport	Ronald Reagan Washington National Airport.
Dallas Love Field Airport	LaGuardia Airport.
Dallas/Fort Worth International Airport	LaGuardia Airport.
Dallas Love Field Airport	McCarran International Airport.
Dallas/Fort Worth International Airport	McCarran International Airport.
Fort Lauderdale—Hollywood International Airport	John F. Kennedy International Airport.
Miami International Airport	John F. Kennedy International Airport.
Los Angeles International Airport	Kahului Airport.
McCarran International Airport	John F. Kennedy International Airport.

[FR Doc. 2016–29883 Filed 12–12–16; 8:45 am]
BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Advanced Engine Fluids

Notice is hereby given that, on October 21, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Advanced Engine Fluids (''AEF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Afton Chemical Corporation, Richmond, VA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AEF intends to file additional written notifications disclosing all changes in membership.

On March 20, 2015, AEF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 22, 2015 (80 FR 22551).

The last notification was filed with the Department on October 26, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 2015 (80 FR 75469).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29874 Filed 12–12–16; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on November 9, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NEXTera ENERGY, Juno Beach, FL; India Smart Grid, New Delhi, INDIA; and Entergy, The Woodlands, TX, have been added as parties to this venture.

Also, California Public Utilities Commission, San Francisco, CA; CeteCom, Milpitas, CA; Ernst & Young, London, UNITED KINGDOM; Iteros (formerly CleanSpark LLC), San Diego, CA; Kitu Systems, Inc. (formerly Grid2Home), San Diego, CA; North America Energy Standards Board (NAESB), Houston, TX; Opus One Solutions, Richmond Hill, CANADA; SmartCloud, Inc., Bedford, MA; Tacoma Power, Tacoma, WA; The University of Tokyo, Tokyo, JAPAN; and Ward Bower Innovations LLC, Albuquerque, NM, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on August 10, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2016 (81 FR 64508).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29877 Filed 12–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on November 14, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Eagle Genomics Ltd., Cambridge, UNITED KINGDOM; Stuart Chalk (individual member), Jacksonville, FL; Pharmacelera, Sant Cugat del Valles, SPAIN; Pine Biotech Inc., New Orleans, LA; MEDEXPRIM, Labastide-Beauvoir, FRANCE; Insightomics, Lisbon, PORTUGAL; and Benchling, San Francisco, CA, have been added as parties to this venture.

Also, Hewlett Packard, Palo Alto, CA has withdrawn as a party to this venture.

In addition, an existing member, IP & Science Business of Thomson Reuters, has changed its name to Clarivate Analytics, Philadelphia, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on August 19, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2016 (81 FR 64506).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29901 Filed 12–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on October 25, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Canton Drop Forge, Canton, OH; Consult M and P LLC, New York, NY; Cougaar Software, Inc., Vienna, VA; Iris Technology Corporation, Irvine, CA; Meggitt (Orange County), Inc., Irvine, CA; Missouri University of Science and Technology, Rolla, MO; Nufern, E. Granby, CT; SEA CORP, Middletown, RI; The Shepherd Chemical Company, Norwood, OH; Transparent Armor Solutions, Inc., Santa Ana, CA; UTEC Corporation, Norman, OK; and Veloxint Corporation, Framington, MA, have been added as parties to this venture.

Also, BEAM Engineering for Advanced Measurements, Orlando, FL; Chesapeake Testing Services, Inc., Belcamp, MD; Evigia Systems, Inc., Ann Arbor, MI; GECO, Inc., Mesa, AZ; GPH Consulting, LLC, Charleston, SC; Kranze Technology Solutions, Inc., Prospect Heights, IL; Lasertel, Inc., Tucson, AZ; MacAulay-Brown, Inc., Dayton, OH; T.E.A.M., Inc., Woonsocket, RI; and UXB International, Inc., Blacksburg, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on August 16, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2016 (81 FR 64507).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–29906 Filed 12–12–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 6, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Jersey in the lawsuit entitled *United States* v. *International Paper Company, et al.,* Civil Action No. 3:16-cv-09045–BRM–DEA.

On that same date, the United States filed its lawsuit under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606(a), 9607(a). The United States' complaint seeks recovery of costs incurred, and performance of remedial action, in connection with the Curtis Specialty Papers Superfund Site, located in the Borough of Milford and the Township of Alexandria, Hunterdon County, New Jersey.

The Consent Decree requires that the defendants shall be responsible, jointly and severally, for paying $1,085,391 in reimbursement of the United States' past response costs, plus interest, payment of interim and future response costs related to the Site, and performance of a remedial action at the Site estimated to cost approximately $1,239,000.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *International Paper Company, et al.,* D.J. Ref. No. 90–11–3–09445/6. All comments must be

submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $85.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $10.75.

Jeffrey K. Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–29790 Filed 12–12–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service; Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202–693–4734.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, January 6, 2017 by contacting Mr. Gregory Green at 202–693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Thursday, January 12, 2017 beginning at 9:00 a.m. and ending at approximately 4:00 p.m. (EST).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, Conference Room N–3437 A, B & C. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: the meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

Notice of Intent To Attend the Meeting: All meeting participants are being asked to submit a notice of intent to attend by Thursday, January 5, 2017, via email to Mr. Gregory Green at *green.gregory.b@dol.gov,* subject line ''January 2017 ACVETEO Meeting.''

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Assistant Designated Federal Official for the ACVETEO, (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for VETS, with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and remarks, Michael Michaud, Assistant Secretary for Veterans Employment and Training Service

9:15 a.m. Administrative Business, Mika Cross, Designated Federal Official

9:20 a.m. Discussion and review of Fiscal Year 2016 Annual Report, Ryan Gallucci, ACVETEO Chair

10:00 a.m. Break

10:15 p.m. Continued discussion and review of Fiscal Year 2016 Annual Report, Ryan Gallucci, ACVETEO Chair

11:30 p.m. Lunch

1:00 p.m. Presentation from Deputy Director Maria Temiquel, Office of National Programs

2:30 p.m. Break

2:45 p.m. Subcommittee Discussion/ Assignments, ACVETEO Chairman

3:30 p.m. Public Forum, Mika Cross, Designated Federal Official

4:00 p.m. Adjourn

Signed in Washington, DC, this 7th day of December, 2016.

Teresa W. Gerton,

Deputy Assistant Secretary for Policy, Veterans' Employment and Training Service.

[FR Doc. 2016–29783 Filed 12–12–16; 8:45 am]

BILLING CODE 4510–79–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the ACRS Subcommittee on Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Metallurgy & Reactor Fuels will hold a meeting on December 15, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 15, 2016–8:30 a.m. until 12:00 p.m.

The Subcommittee will review and discuss Regulatory Guide 1.207, ''Guidelines for Evaluating the Effects of Light-Water Reactor Water Environments in Fatigue Analyses of Metal Components. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016 (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 6, 2016.

Mark Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–29854 Filed 12–12–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: 12, 19, 26, 2016, January 2, 9, 16, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 12, 2016

Thursday, December 15, 2016

9:30 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Larniece McKoy Moore: 301–415–1942)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of December 19, 2016—Tentative

There are no meetings scheduled for the week of December 19, 2016.

Week of December 26, 2016—Tentative

There are no meetings scheduled for the week of December 26, 2016.

Week of January 2, 2017—Tentative

There are no meetings scheduled for the week of January 2, 2017.

Week of January 9, 2017—Tentative

Friday, January 13, 2017

9:00 a.m. Briefing on Operator Licensing Program (Public Meeting) (Contact: Nancy Salgado: 301–415–1324)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of January 16, 2017—Tentative

There are no meetings scheduled for the week of January 16, 2017.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0981 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: December 9, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–29959 Filed 12–9–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on December 13, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect

information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, December 13, 2016—8:30 p.m. until 5:00 p.m.

The Subcommittee will discuss the NRC staff's progress regarding the level 3 Probabilistic Risk Assessment Project. The Subcommittee will hear presentations by and hold discussions with the NRC staff, the industry, and interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2015 (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: November 29, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–29857 Filed 12–12–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Metallurgy & Reactor Fuels will hold a meeting on December 15, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 15, 2016–1:00 p.m. until 5:00 p.m.

The Subcommittee will review and discuss Draft NUREG–2195, ''Consequential Steam Generator Tube Rupture Analysis for Westinghouse and Combustion Engineering Plants with Thermally Treated Alloy 600 and 690 Steam Generator Tubes.'' The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016 (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 6, 2016.

Mark Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–29855 Filed 12–12–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Florida Power and Light Company; Turkey Point, Units 6 and 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the application of Florida Power and Light Company (FPL) for combined licenses (COLs) to construct and operate two additional units (Units 6 and 7) at the Turkey Point site in Miami-Dade County, Florida. This mandatory hearing will concern safety and environmental matters relating to the requested COLs.

DATES: The hearing will be held on February 9, 2017, beginning at 9:00 a.m. Eastern Standard Time. For the schedule for submitting pre-filed documents and deadlines affecting Interested Government Participants, see

Section V of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID 52–040 and 52–041 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: NRC's Electronic Hearing Docket: You may obtain publicly available documents related to this hearing online at *http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html.*

- 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 (if it 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: Denise McGovern, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act of 1954, as amended (the Act), it will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding FPL's June 30, 2009, application for COLs under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), to construct and operate two additional units (Units 6 and 7) at the Turkey Point site in Miami-Dade County, Florida (*http://www.nrc.gov/reactors/new-reactors/col/turkey-point.html*). This mandatory hearing will concern safety and environmental matters relating to the requested COLs, as more fully described below. Participants in the hearing are not to address any contested issues in their written filings or oral presentations.

II. Evidentiary Uncontested Hearing

The Commission will conduct this hearing beginning at 9:00 a.m. Eastern Standard Time on February 9, 2017, at the U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The hearing on these issues will continue on subsequent days, if necessary.

III. Presiding Officer

The Commission is the presiding officer for this proceeding.

IV. Matters To Be Considered

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR 52.97 and 10 CFR 51.107. Those findings that must be made for each COL are as follows:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

The Commission will determine whether (1) the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) any required notifications to other agencies or bodies have been duly made; (3) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations; (4) the applicant is technically and financially qualified to engage in the activities authorized; and (5) issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

The Commission will (1) determine whether the requirements of Sections 102(2)(A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined licenses should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

V. Schedule for Submittal of Pre-Filed Documents

No later than January 19, 2017, unless the Commission directs otherwise, the NRC staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than January 19, 2017, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The NRC staff previously submitted its testimony on December 2, 2016.

The Commission may issue written questions to the applicant or the NRC staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than January 6, 2017. Responses to such questions are due January 19, 2017, unless the Commission directs otherwise.

VI. Interested Government Participants

No later than January 4, 2017, any interested State, local government body, or affected, Federally-recognized Indian Tribe may file with the Commission a statement of any issues or questions to which the State, local government body, or Indian Tribe wishes the Commission to give particular attention as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system [1] by the deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the NRC staff and applicant, its inquiries at the oral hearing and its decision following the hearing. The Commission may also request, prior to January 26, 2017, that one or more particular States, local government bodies, or Indian Tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a

[1] The process for accessing and using the agency's E-filing system is described in the June 18, 2010, notice of hearing that was issued by the Commission for this proceeding. See Florida Power and Light Company; Combined License Application for the Turkey Point Units 6 and 7; Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 34777). Participants who are unable to use the electronic information exchange (EIE), or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to *hearingdocket@nrc.gov.*

statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian Tribe in the pre-hearing filings described above. The decision of whether to request the presence of a representative of a State, local government body, or Indian Tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

States, local governments, or Indian Tribes should be aware that this evidentiary hearing is separate and distinct from the NRC's contested hearing process. Issues within the scope of contentions that have been admitted or contested issues pending before the Atomic Safety and Licensing Board or the Commission in a contested proceeding for a COL application are outside the scope of the uncontested proceeding for that COL application. In addition, although States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to issues regarding the COL application or the NRC staff's associated environmental review that do fall within the scope of the uncontested proceeding (*i.e.,* issues that are not within the scope of admitted contentions or pending contested issues), they should be aware that many of the procedures and rights applicable to the NRC's contested hearing process due to the inherently adversarial nature of such proceedings are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR 2.315(c) (for interested States, local governments, and Indian Tribes seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, local government, or Indian Tribe to participate in the separate contested hearing process.

Dated at Rockville, Maryland, this 7th day of December, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2016–29777 Filed 12–12–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Cancellation of Submission for Review: Presidential Management Fellows (PMF) Application, 3206–0082

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is cancelling its proposal to reinstate, with revisions, an expired information collection, the Presidential Management Fellows (PMF) Application. OPM has determined that this application is not an information collection subject to the Paperwork Reduction Act. OPM will not publish a 30-day notice or submit the PMF Application for clearance by the Office of Management and Budget before administering the application as part of the PMF examination.

ADDRESSES: Address all comments concerning this notice to the U.S. Office of Personnel Management, PMF Program Office, 1900 E St. NW., Room 6500, Washington, DC 20415, or send via electronic mail to *pmf@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Send via electronic mail to *pmf@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM originally posted a 60-day notice to solicit comment on its proposal to reinstate, with revisions, an expired information collection, the PMF Application. This notice was published in the **Federal Register** (81 FR 4405) on July 6, 2016, and no comments were received.

OPM has determined that the annual PMF application and assessment process falls within the exception of 5 CFR 1320.3(h)(7), which establishes that ''[e]xaminations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations'' do not constitute information collections subject to the Paperwork Reduction Act. Therefore, OPM will not publish a 30-day notice or submit the PMF Application for clearance by the Office of Management and Budget before administering the application.

The original ICR approval (3206–0082) expired in 02/2016 and is now cancelled.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–29768 Filed 12–12–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. R2017–1; Order No. 3648]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service notice revising one of its inflation-based rate adjustments affecting market dominant products. The adjustment and other changes are scheduled to take effect January 22, 2017. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 14, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Overview
II. Procedural Schedule
III. Administrative Actions
IV. Ordering Paragraphs

I. Introduction and Overview

On December 6, 2016, the Postal Service filed a notice [1] revising its Notice of Market Dominant Price adjustment,[2] previously filed in this docket. The Notice of Revision reduces the Postal Service's proposed price increase for Certified Mail with Restricted Delivery and/or Adult Signature from $8.35 to $8.30. Notice of Revision at 1. The Notice of Revision does not alter the proposed implementation date for the increased Special Services prices of January 22, 2017. Notice of Revision at 1.

Contents of filing. The Postal Service's filing consists of the Notice of Revision,

[1] Notice of Revision to United States Postal Service Notice of Market-Dominant Price Adjustment, Attachment A, December 6, 2016 (Notice of Revision).

[2] United States Postal Service Notice of Market Dominant Price Adjustment, October 12, 2016. *See also* Notice of Revisions to United States Postal Service Notice of Market-Dominant Price Adjustment, Attachment A, and Attachment B—Errata, October 28, 2016; Notice of Revisions to United States Postal Service Notice of Market-Dominant Price Adjustment, Attachment A, and Attachment B—Errata, November 8, 2016.

which explains the reasons for the change, updated proposed Mail Classification Schedule language, and revised financial workpapers.[3]

Planned price adjustments. The Postal Service plans to reduce its proposed price increase for Certified Mail with Restricted Delivery and/or Adult Signature from $8.35 to $8.30. Notice of Revision at 1. The Postal Service states that technical issues effectively prevent it from pursuing the original proposed increase. *Id.* at 1–2. The Postal Service has weighed the cost and revenue impacts of potential solutions and concluded that proceeding with the revised price is preferable to delay or staggered implementation of its proposed Special Services price increases. *Id.* at 2.

As a result of this revision, the Postal Service's proposed price change for the Special Services class decreases from 2.515 percent to 2.514 percent. If approved, the Postal Service's unused price adjustment authority for the Special Services class would increase by a corresponding 0.001 percent.

II. Procedural Schedule

The Commission acknowledges the Postal Service's interest in the expeditious resolution of this matter and its concerns regarding the limited time remaining prior to the Postal Service's proposed implementation date. For this reason, the Commission will endeavor to issue a final order resolving the proposed Special Services price adjustments within seven days of the conclusion of the comment period provided below.

III. Administrative Actions

The Commission hereby provides public notice of the Postal Service's filing. The Commission invites comments from interested persons on whether the Notice of Revision is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than December 14, 2016.

The Commission has posted the public portions of the Postal Service's filing on its Web site at *http://www.prc.gov.* The Commission will post revisions to the filing (if any) or other documents the Postal Service submits in this docket on its Web site, along with related Commission documents, comments, or other submissions, unless such filings are the subject of an application for non-public treatment. The Commission's policy on access to documents filed under seal appears in 39 CFR part 3007.

IV. Ordering Paragraphs

It is ordered:

1. Comments on the revised proposed price adjustment are due no later than December 14, 2016.

2. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–29782 Filed 12–12–16; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See* Notice of the United States Postal Service of Filing of Revised Version of USPS–LR–R2017–1/5, December 6, 2016.

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Withholding Certificate for Railroad Retirement Monthly Annuity Payments; OMB 3220–0149.

The Internal Revenue Code requires that all payers of tax liable private pensions to U.S. citizens or residents: (1) Notify each recipient at least concurrent with initial withholding that the payer is, in fact, withholding benefits for tax liability and that the recipient has the option of electing not to have the payer withhold, or to withhold at a specific rate; (2) withhold benefits for tax purposes (in the absence of the recipient's election not to withhold benefits); and (3) notify all beneficiaries, at least annually, that they have the option to change their withholding status or elect not to have benefits withheld.

The RRB provides Form RRB–W4P, Withholding Certificate for Railroad Retirement Payments, to its annuitants to exercise their withholding options. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent. No changes are proposed to Form RRB W–4P.

The RRB estimates that 25,000 annuitants utilize Form RRB W–4P annually. The completion time for Form RRB W–4P varies depending on individual circumstances. The estimated average completion time for Form RRB W–4P is 39 minutes for recordkeeping, 24 minutes for learning about the law or the form, and 59 minutes for preparing the form.

2. Title and purpose of information collection: Earnings Information Request; OMB 3220–0184. Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR 230.

The RRB utilizes Form G–19–F, *Earnings Information Request,* to obtain earnings information that either had not been previously reported or erroneously reported by a beneficiary. Currently the claimant is asked to enter the date they stopped working, if applicable. If a respondent fails to complete the form, the RRB may be unable to pay them benefits. One response is requested of each respondent.

The RRB proposes the implementation of an Internet-based equivalent Form G–19F. No other changes are proposed.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–19–F	900	8	120
Total	900		120

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@RRB.GOV.* Written comments should be received within 60 days of this notice.

Brian Foster,

Records Officer.

[FR Doc. 2016–29904 Filed 12–12–16; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32379; File No. 812–14721]

Stifel, Nicolaus & Company, Inc., et al.; Notice of Application and Temporary Order

December 6, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order (''Temporary Order'') exempting them from section 9(a) of the Act, with respect to an injunction entered against Stifel, Nicolaus & Company, Inc. (''Stifel Nicolaus'') on December 6, 2016 by the United States District Court for the Eastern District of Wisconsin (''Court''), in connection with a consent order between Stifel Nicolaus and the Commission, until the Commission takes final action on an application for a permanent order (the ''Permanent Order,'' and with the Temporary Order, the ''Orders''). Applicants also have applied for a Permanent Order.

APPLICANTS: Stifel Nicolaus, Choice Financial Partners, Inc. (''Choice''), 1919 Investment Counsel, LLC (''1919ic''), and Ziegler Capital Management, LLC (''ZCM'') (each an ''Applicant'' and collectively, the ''Applicants'').

FILING DATE: The application was filed on December 6, 2016.

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 January 3, 2017, 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: Stifel Nicolaus and Choice: One Financial Plaza, 501 North Broadway, St. Louis, MO 63102; 1919ic: One South Street, Suite 2500, Baltimore, MD 21202; ZCM: 70 West Madison Street, Suite 2400, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, Vanessa Meeks, Senior Counsel, or Parisa Haghshenas, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Stifel Nicolaus, a Missouri corporation, is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). Stifel Nicolaus is a wholly-owned subsidiary of Stifel Financial Corp. (''Stifel Financial''), a Delaware corporation. Stifel Financial is the ultimate parent company of each of the Applicants.

2. Choice, 1919ic, and ZCM are each a wholly-owned subsidiary of Stifel Financial and are each an investment adviser registered under the Advisers Act. Choice, a Missouri corporation, was organized in early 2007. 1919ic, a Maryland limited liability company, was acquired by Stifel Financial in 2014. ZCM, a Wisconsin limited liability company, was acquired by Stifel Financial in 2013. Choice, 1919ic, and ZCM each serve as investment adviser or investment sub-adviser to investment companies registered under the Act, or series of such companies (each a ''Fund'') and are collectively referred to as the ''Fund Servicing Applicants.''

3. While no existing company of which Stifel Nicolaus is an affiliated person within the meaning of section 2(a)(3) of the Act (''Affiliated Person''), other than the Fund Servicing Applicants, currently serves as an investment adviser or depositor of any Fund, employees' securities company (''ESC'') or investment company that has elected to be treated as a business development company under the Act (''BDC''), or as a principal underwriter (as defined in section 2(a)(29) of the Act) for any open-end management investment company registered under the Act (''Open-End Fund''), unit investment trust registered under the Act (''UIT''), or face-amount certificate company registered under the Act (''FACC'') (such activities, ''Fund Servicing Activities''), Applicants request that any relief granted also apply to any existing company of which Stifel Nicolaus is an Affiliated Person and to any other company of which Stifel Nicolaus may become an Affiliated Person in the future (together with the Fund Servicing Applicants, the ''Covered Persons'') [1] with respect to

[1] Stifel Nicolaus is a party to the application, but does not currently engage in, and will not engage in, any Fund Servicing Activities, and is not a Covered Person.

any activity contemplated by section 9(a) of the Act.

4. On August 10, 2011, the Commission filed a complaint, and on October 5, 2012, an amended complaint which superseded the original complaint (the ''Complaint'') in the Court captioned *SEC* v. *Stifel Nicolaus & Co., Inc., et al.* (the ''Action'').[2] The Complaint alleged that in 2006, Stifel Nicolaus and David W. Noack, a Senior Vice President of Stifel Nicolaus and head of its Milwaukee office (''Noack''), violated the federal securities laws in connection with their recommendations that five school districts in eastern Wisconsin (the ''School Districts'') invest their own funds, together with funds borrowed by specially-created trusts (the ''OPEB Trusts''), in certain synthetic collateralized debt obligations (the ''CDO Investments'') in order to cover other post-employment benefits. In the aggregate, the School Districts invested their own funds—plus funds borrowed from Depfa Bank, plc (''Depfa Bank'')—for an aggregate $200 million of investments in the CDO Investments. In 2008, one of the School Districts contributed an additional $10 million to fund a collateral shortfall to Depfa Bank. The investments failed and the School Districts suffered a complete loss of their cash investment of $47.3 million in the aggregate.

5. Stifel Nicolaus, Noack and the staff of the Division of Enforcement at the Commission have reached an agreement to settle the Action. As part of the agreement, the parties have submitted a consent of Defendant Stifel Nicolaus (the ''Consent'') that contains certain admitted facts and a form of a Final Judgment as to Defendants Stifel Nicolaus and Noack (the ''Final Judgment''),[3] which has been entered by the Court. According to the Final Judgment, Stifel Nicolaus and Noack acted negligently by making material misstatements and omissions to the School Districts and by failing adequately to investigate the appropriateness of the CDO Investments and, further, that by engaging in those acts and admissions, Stifel Nicolaus and Noack violated the federal securities laws. The Final Judgment provides that Stifel Nicolaus and Noack are permanently restrained and enjoined from violating, directly or indirectly, sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (the ''Injunction''). The Final Judgment provides for joint and several liability for disgorgement of $1.66 million plus prejudgment interest in the amount of $840,000 and civil penalties in the amount of $22 million against Stifel Nicolaus and $100,000 against Noack.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any Open-End Fund, UIT or FACC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that, taken together, sections 9(a)(2) and 9(a)(3) have the effect of precluding the Fund Servicing Applicants and Covered Persons from engaging in Fund Servicing Activities upon the entry of the Injunction against Stifel Nicolaus because Stifel Nicolaus is an Affiliated Person of each Fund Servicing Applicant and Covered Person.

2. Section 9(c) of the Act provides that, upon application, the Commission shall by order grant an exemption from the disqualification provisions of section 9(a) of the Act, either unconditionally or on an appropriate temporary or other conditional basis, to any person if that person establishes that: (a) The prohibitions of section 9(a), as applied to the person, are unduly or disproportionately severe or (b) the conduct of the person has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Fund Servicing Applicants and other Covered Persons may, if the relief is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has not been such as to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct described in the factual admissions contained in the Final Judgment (the ''Conduct'') did not involve any of the Fund Servicing Applicants performing Fund Servicing Activities or otherwise. Applicants also state that the Conduct did not involve any Fund with respect to which the Fund Servicing Applicants engaged in Fund Servicing Activities or their respective assets. In addition, Applicants state that the Conduct occurred from no earlier than late 2005 through the end of 2006 (the ''Period''). Applicants note that all the Fund Servicing Applicants were acquired or began activities (including Fund Servicing Activities) after the Period had concluded.

5. Applicants state that: (i) None of the current or former directors, officers or employees of the Fund Servicing Applicants had any involvement in the Conduct; (ii) the personnel who were involved in the Conduct (or who may be subsequently identified by the Applicants as having been responsible for or involved in the Conduct) have had no, and will not have any, involvement in providing Fund Servicing Activities and will not serve as an officer, director, or employee of any Covered Person providing Fund Servicing Activities; and (iii) because the personnel of the Fund Servicing Applicants did not have any involvement in the Conduct, shareholders of Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or sub-adviser.

6. Applicants submit that applying section 9(a) to bar the Fund Servicing Applicants or other Covered Persons, who were not involved in the Conduct, from serving Funds and their shareholders in the absence of improper practices relating to their Fund Servicing Activities would be unduly or disproportionately severe. Applicants state that the section 9(a) disqualification could result in substantial costs to the Funds to which the Fund Servicing Applicants provide investment advisory services, and such Funds' operations would be disrupted, as they sought to engage new advisers or sub-advisers. Applicants assert that these effects would be unduly severe given the Fund Servicing Applicants' lack of involvement in the Conduct. Moreover, Applicants state that Stifel

[2] *SEC* v. *Stifel Nicolaus & Co., Inc., et al.,* Case No. 11–CV–755 (E.D. Wis.) (Aug. 10, 2011).

[3] *SEC* v. *Stifel Nicolaus & Co., Inc., et al.,* Case No. 11–CV–755 (E.D. Wis.) (Dec. 6, 2016).

Nicolaus has taken remedial actions to address the Conduct, as outlined in the application. Thus, Applicants believe that granting the exemption from section 9(a), as requested, would be consistent with the public interest and the protection of investors.

7. Applicants state that the inability of the Fund Servicing Applicants to continue to provide investment advisory services to Funds would result in those Funds and their shareholders facing unduly and disproportionately severe hardships. Applicants assert that uncertainty caused by prohibiting the Fund Servicing Applicants from continuing to serve the Funds in an advisory capacity would disrupt investment strategies and could result in significant net redemptions of shares of the Funds, which would frustrate efforts to manage effectively the Funds' assets and could increase the Funds' expense ratios to the detriment of non-redeeming shareholders. In addition, although a suitable successor investment adviser or sub-adviser could replace the Fund Servicing Applicants, Applicants state that disqualifying the Fund Servicing Applicants could result in substantial costs to the Funds and others because of the need to obtain shareholder approvals of new investment advisory agreements with the new adviser or sub-adviser.

8. Applicants state that if the Fund Servicing Applicants were barred under section 9(a) of the Act from engaging in Fund Servicing Activities, and were unable to obtain the requested exemption, the effect on their businesses and employees would be unduly and disproportionately severe because they have committed substantial capital and other resources to establishing an expertise in advising the Funds. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Servicing Activities would not only adversely affect their businesses, but would also adversely affect their employees who are involved in those activities. Applicants state that the vast majority of these employees working for the Fund Servicing Applicants were not part of the Stifel Financial organization until after the Conduct had concluded in 2006. Applicants state that many of these employees would likely seek alternative employment and would encounter significant difficulty and/or delay in doing so.

9. Applicants state that they will distribute to the boards of trustees of the Funds (the ''Boards'') written materials describing the circumstances that led to the Injunction and any impact on the Funds, and the application. The written materials will include an offer to discuss the materials at an in-person meeting with each Board of the Fund, including the directors who are not ''interested persons'' of such Funds as defined in section 2(a)(19) of the Act, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act. Applicants state they will provide the Boards with the information concerning the Injunction and the application that is necessary for those Funds to fulfill their disclosure and other obligations under the federal securities laws and will provide them a copy of the Final Judgment entered by the Court.

10. Applicants state that none of the Applicants has previously applied for an exemptive order under section 9(c) of the Act.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders within 60 days of the date of the Permanent Order.

3. Stifel Nicolaus will comply with the terms and conditions of the Consent.

4. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders and Consent within 30 days of discovery of the material violation.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Fund Servicing Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the representations and conditions in the application, from December 6, 2016, until the Commission takes final action on their application for a permanent order.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–29793 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79491; File No. SR–FICC–2016–007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Implement a Change to the Methodology Used in the MBSD VaR Model

December 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2016, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by FICC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would change the methodology that FICC uses in the Mortgage-Backed Securities Division's (''MBSD'') value-at-risk (''VaR'') model from one that employs a full revaluation approach to one that would employ a sensitivity approach, as described in greater detail below.[4]

The proposed rule change also consists of amendments to the MBSD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FICC also filed this proposal as an advance notice pursuant to Section 802(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1) under the Act. 15 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1). *See* File No. SR–FICC–2016–801.

[4] Capitalized terms used herein and not defined shall have the meaning assigned to such terms in the MBSD Clearing Rules (''MBSD Rules'') *available at www.dtcc.com/legal/rules-and-procedures.aspx.*

Rules in order to (1) revise the definition of VaR Charge to reference an alternative volatility calculation (referred to herein as the Margin Proxy (as defined in Item II(A) below)), which would be employed in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time, (2) revise the definition of VaR Charge to include a minimum amount (the ''VaR Floor'') that FICC would employ as an alternative to the amount calculated by the proposed VaR model for portfolios where the VaR Floor would be greater than the model-based charge amount, (3) eliminate two components from the Required Fund Deposit calculation that would no longer be necessary following implementation of the proposed VaR model, and (4) change the margining approach that FICC may employ for certain securities with inadequate historical pricing data from one that calculates charges using a historic index volatility model to one that would employ a simple haircut method, as described in greater detail below.

The proposed sensitivity approach and Margin Proxy methodologies would be reflected in the Methodology and Model Operations Document—MBSD Quantitative Risk Model (the ''QRM Methodology''). FICC is requesting confidential treatment of this document and has filed it separately with the Secretary of the Commission.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to change the methodology that is currently used in MBSD's VaR model from one that employs a full revaluation approach to one that would employ a sensitivity approach. In connection with this change, FICC is also proposing to (1) amend the definition of VaR Charge to reference that an alternative volatility calculation (referred to herein as the Margin Proxy (as defined in section B below)) would be employed in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time, (2) revise the definition of VaR Charge to include a VaR Floor that FICC would employ as an alternative to the amount calculated by the proposed VaR model for portfolios where the VaR Floor would be greater than the model-based charge amount, (3) eliminate two components from the Required Fund Deposit calculation that would no longer be necessary following implementation of the proposed VaR model, and (4) change the margining approach that FICC may employ for certain securities with inadequate historical pricing data from one that calculates charges using a historic index volatility model to one that would employ a simple haircut method. These changes are described in more detail below.

A. The Required Fund Deposit and Clearing Fund Calculation Overview

A key tool that FICC uses to manage market risk is the daily calculation and collection of Required Fund Deposits from Clearing Members. The Required Fund Deposit serves as each Clearing Member's margin. The aggregate of all Clearing Members' Required Fund Deposits constitutes the Clearing Fund of MBSD, which FICC would access should a defaulting Clearing Member's own Required Fund Deposit be insufficient to satisfy losses to FICC caused by the liquidation of that Clearing Member's portfolio.

The objective of a Clearing Member's Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of such Member's portfolio in the event that FICC ceases to act for such Member (hereinafter referred to as a ''default''). Pursuant to the MBSD Rules, each Clearing Member's Required Fund Deposit amount currently consists of the following components: The VaR Charge, the Coverage Charge, the Deterministic Risk Component, the margin requirement differential (''MRD'') and, to the extent appropriate, a special charge.[6] Of these components, the VaR Charge comprises the largest portion of a Clearing Member's Required Fund Deposit amount.

The VaR Charge is calculated using a risk-based margin methodology that is intended to capture the market price risk associated with the securities in a Clearing Member's portfolio. The methodology uses historical market moves to project the potential gains or losses that could occur in connection with the liquidation of a defaulting Clearing Member's portfolio. The methodology assumes that a portfolio would take three days to hedge or liquidate in normal market conditions. The projected liquidation gains or losses are used to determine the amount of the VaR Charge, which is calculated to cover projected liquidation losses at a 99 percent confidence level.[7]

FICC employs daily backtesting to determine the adequacy of each Clearing Member's Required Fund Deposit. The backtesting compares the Required Fund Deposit for each Clearing Member with actual price changes in the Clearing Member's portfolio. The portfolio values are calculated by using the actual positions in such Member's portfolio on a given day and the observed security price changes over the following three days. These backtesting results are reviewed as part of FICC's VaR model performance monitoring and assessment of the adequacy of each Clearing Member's Required Fund Deposit.

FICC currently calculates the VaR Charge using a methodology referred to as the ''full revaluation'' approach. The full revaluation approach employs a historical simulation method to fully reprice each security in a Clearing Member's portfolio using valuation algorithms with prevailing and historical market data. VaR provides an estimate of the possible losses for a given portfolio based on a given confidence level over a particular time horizon. The VaR Charge is calibrated at a 99 percent confidence level based on a 1-year look-back period assuming a three-day liquidation/hedge period. If FICC determines that a security's price history is incomplete and the market price risk cannot be calculated by the VaR model, then FICC applies an index volatility model until such security's trading history and pricing reflects market risk factors that can be appropriately calibrated from the security's historical data.[8]

B. Proposed Change To Replace the Methodology Used in the Existing VaR Charge Calculation

During the volatile market period that occurred during the second and third quarters of 2013, FICC's full revaluation approach did not respond effectively to the levels of market volatility at that

[5] *See* 17 CFR 240.24b–2.

[6] MBSD Rule 4 Section 2.

[7] Unregistered Investment Pool Clearing Members are subject to a VaR Charge with a minimum targeted confidence level assumption of 99.5 percent.

[8] MBSD Rule 4 Section 2(c).

time, and the VaR Charge amounts that were calculated using the profit and loss scenarios generated by FICC's full revaluation model did not achieve a 99 percent confidence level. Thus, the VaR Charge and the Required Fund Deposit yielded backtesting deficiencies beyond FICC's risk tolerance, which prompted FICC to employ a supplemental risk charge to ensure that each Clearing Member's VaR Charge would achieve a minimum 99 percent confidence level. This supplemental charge, referred to as the margin proxy (the ''Margin Proxy''), ensured that each Clearing Member's VaR Charge was adequate and, at the minimum, mirrored historical price moves.[9] Shortly thereafter, the annual model validation exercise revealed that FICC's prepayment model,[10] which is a component of the full revaluation approach, had failed to perform as expected due to shifting market dynamics that were not accurately captured by the model.

In connection with the above, FICC performed a review of the existing model deficiencies, examined the root causes of such deficiencies and considered options that would remediate the observed model weaknesses. As a result of this review, FICC is proposing to change MBSD's methodology for calculating the VaR Charge by: (1) Replacing the full revaluation approach with the sensitivity approach,[11] (2) employing the Margin Proxy as an alternative volatility calculation in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time, and (3) establishing a VaR Floor as the VaR Charge to address a circumstance where the proposed VaR model yields a VaR Charge amount that is lower than 5 basis points of the market value of a Clearing Member's gross unsettled positions.[12]

The current full revaluation method uses valuation algorithms, one component of which is FICC's prepayment model, to fully reprice each security in a Clearing Member's portfolio over a range of historically simulated scenarios. While there are benefits to this method, some of its deficiencies are that it requires significant historical market data inputs, calibration of various model parameters and extensive quantitative support for price simulations. FICC believes that the proposed sensitivity approach would address these deficiencies because it would leverage external vendor expertise in supplying the market risk attributes, which would then be incorporated by FICC into its model to calculate the VaR Charge. FICC would source security-level risk sensitivity data and relevant historical risk factor time series data from an external vendor for all Eligible Securities.[13] The sensitivity data is generated by the vendor based on its econometric, risk and pricing models. Because the quality of this data is an important component of calculating the VaR Charge, FICC would conduct independent data checks to verify the accuracy and consistency of the data feed received from the vendor. With respect to the historical risk factor time series data, FICC has evaluated the historical price moves and determined which risk factors primarily explain those price changes, a practice commonly referred to as risk attribution. The following risk factors have been incorporated into MBSD's proposed VaR methodology: Key rate, convexity, spread, volatility, mortgage basis and time.[14]

FICC's proposal to use third-party risk factor data requires that FICC take steps to mitigate potential model risk. FICC has reviewed a description of the vendor's calculation methodology and the manner in which the market data is used to calibrate the vendor's models. FICC understands and is comfortable with the vendor's controls, governance process and data quality standards. Additionally, FICC would conduct an independent review of the vendor's release of a new version of the model. As described in the QRM Methodology, to the extent that the vendor changes its model and methodologies that produce the risk factors and risk sensitivities, the effect of these changes to FICC's proposed sensitivity approach would be reviewed by FICC. Future changes to the QRM Methodology would be subject to a proposed rule change pursuant to the Act Rule 19b–4 (''Rule 19b–4'').[15] Modifications to the proposed VaR model may be subject to a proposed rule change pursuant to Rule 19b–4[16] and/or an advance notice filing pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010,[17] and Rule 19b–4(n)(1)(i) under the Act.[18]

Under the proposed approach, a Clearing Member's portfolio risk sensitivities would be calculated by FICC as the aggregate of the security level risk sensitivities weighted by the corresponding position market values. The portfolio risk sensitivities and the vendor supplied historical risk factor time series data would then be used by FICC's risk model to calculate the VaR Charge for each Clearing Member. More specifically, FICC would look at the historical changes of the chosen risk factors during the look-back period in order to generate risk scenarios to arrive at the market value changes for a given portfolio. A statistical probability distribution would be formed from the portfolio's market value changes.

[9] The Margin Proxy is currently employed to provide supplemental coverage to the VaR Charge, however, under this proposed change, the Margin Proxy would only be employed as an alternative volatility calculation in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time.

[10] Cash flow uncertainty as a result of unscheduled payments of principal (prepayments) is a key investment characteristic of most mortgage-backed securities. The existing VaR model uses a full revaluation approach that fully reprices each instrument under each historically simulated scenario. One component of this pricing model is FICC's prepayment model. This model was implemented during the first quarter of 2013 and it is described in AN–FICC–2012–09. Securities Exchange Act Release No. 34–68498 (December 20, 2012) 77 FR 76311 (December 27, 2012) (AN–FICC–2012–09).

[11] Two key choices in designing a VaR model are (1) the approach used to generate simulation scenarios (*e.g.,* historical simulation or Monte Carlo) and (2) the approach used to value the portfolio change under the simulated scenarios (*e.g.,* full revaluation approach or sensitivity approach).

[12] Assuming the market value of gross unsettled positions of $500,000,000, the VaR Floor calculation would be .0005 multiplied by $500,000,000 = $250,000. If the VaR model charge is less than $250,000, then the VaR Floor calculation of $250,000 would be set as the VaR Charge.

[13] Specified pool trades are mapped to the corresponding positions in to-be-announced securities (''TBAs''). For options on TBAs, it should be noted that FICC's guarantee for options is limited to the intrinsic value of option positions (that is, when the underlying price of the TBA position is above the call price, the option is considered in-the-money and FICC's guarantee reflects this portion of the option's positive value) at the time of a Clearing Member's insolvency. As such, the value change of an option position would be simulated as the change in intrinsic values over the period of risk.

[14] These risk factors are defined as follows:

- Key rate measures the sensitivity of a price change to changes in interest rates;
- convexity measures the degree of curvature in the price/yield relationship of key interest rates;
- spread is the yield spread that is added to a benchmark yield curve to discount a TBA's cash flows to match its market price, which takes into account a credit premium and the option-like feature of mortgage-backed-securities due to prepayment;
- volatility reflects the implied volatility observed from the swaption market to estimate fluctuations in interest rates, which impact the prepayment assumptions;
- mortgage basis captures the basis risk between the prevailing mortgage rate and a blended Treasury rate, which impacts borrowers' refinance incentives and the model prepayment assumptions; and
- time risk factor accounts for the time value change (or carry adjustment) over the assumed liquidation period.

[15] *See* 17 CFR 240.19b–4.

[16] *Id.*

[17] *See* 12 U.S.C. 5465(e)(1).

[18] *See* 17 CFR 240.19b–4(n)(1)(i).

The proposed sensitivity approach differs from the current full revaluation method mainly in how the market value changes are calculated. The full revaluation method accounts for changes in properties of mortgage-backed securities that change over time by incorporating certain historical data [19] to calibrate the model that generates a simulated interest rate curve. This data is used to create a distribution of returns per TBA. The proposed sensitivity approach, by comparison, would simulate the market value changes of a Clearing Member's portfolio under a given market scenario as the sum of the portfolio risk factor exposure multiplied by the corresponding risk factor movements.

The sensitivity approach would provide three key benefits. First, the sensitivity approach incorporates both historical data and current risk factor sensitivities while the full revaluation approach is calibrated with only historical data. The proposed sensitivity approach integrates both observed risk factor changes and current market conditions to more effectively respond to current market price moves that may not be reflected in the historical price moves. This is evidenced in FICC's independent validation of the proposed model and the backtesting results. The risk factor data is sourced from an industry-leading vendor risk model with trading quality accuracy. As part of the assessment of the proposed VaR model, the independent validation of the proposed model indicated that the proposed sensitivity approach would address deficiencies observed in the existing model by leveraging external vendor expertise, which FICC does not need to develop in-house, in supplying the market risk attributes that would then be incorporated by FICC into its model to calculate the VaR Charge. FICC has also performed backtesting to validate the performance of the proposed model and determine the impact on the VaR Charge. Based on FICC's review of the backtesting results and the impact study, the sensitivity approach provides better coverage on volatile days and a material improvement in margin coverage, while not significantly increasing the overall Clearing Fund. Results of the analysis indicate that the proposed sensitivity approach would be more responsive to changing market dynamics and that it would not negatively impact FICC or its Clearing Members.

The second benefit of the proposed sensitivity approach is that it would provide more transparency to Clearing Members. Since Clearing Members typically use risk factor analysis for their own risk and financial reporting such Members would have comparable data and analysis to assess the variation in their VaR Charge based on changes in the market value of their portfolios. Thus, Clearing Members would be able to simulate the VaR Charge to a closer degree than under the existing VaR model.

The third benefit of the proposed sensitivity approach is that it provides FICC with the ability to increase the look-back period used to generate the risk scenarios from 1 year to 10 years plus, to the extent applicable, an additional stressed period [20] without material re-calibration of the VaR model. The extended look-back period would be used to ensure that the historical simulation is inclusive of stressed market periods.

FICC would have the ability to include an additional period of historically observed stressed market conditions to a 10-year look-back period if FICC observes that (1) the results of the model performance monitoring are not within FICC's 99th percentile confidence level or (2) the 10-year look-back period does not contain sufficient stressed market conditions. While FICC could extend the 1-year look-back period in the existing full revaluation approach to a 10-year look-back period, the performance of the model could deteriorate if current market conditions are materially different than indicated in the historical data. Additionally, since the full revaluation method requires FICC to maintain in-house complex pricing models and mortgage prepayment models, enhancing these models to extend the look-back period to include 10-years of historical data involves significant model development. The sensitivity approach, on the other hand, would incorporate a longer look-back period of 10 years, which would allow the proposed model to capture periods of historical volatility.

On an annual basis, FICC would assess whether an additional stressed period should be included. This assessment would include a review of (1) the largest moves in the dominating market risk factor of the proposed VaR model, (2) the impact analyses resulting from the removal and/or addition of a stressed period and (3) the backtesting results of the proposed look-back period. As described in the QRM Methodology, approval by FICC's Model Risk Governance Committee (''MRGC'') and, to the extent necessary, the Management Risk Committee (''MRC'') would be required to determine when to apply an additional period of stressed market conditions to the look-back period and the appropriate historical stressed period to utilize if it is not within the current 10-year period.

Finally, FICC does not believe that its engagement of the vendor would present a conflict of interest to FICC because the vendor is not an existing Clearing Member nor are any of the vendor's affiliates existing Clearing Members. To the extent that the vendor or any of its affiliates submit an application to become a Clearing Member, FICC will negotiate an appropriate information barrier with the applicant in an effort to prevent a conflict of interest from arising. An affiliate of the vendor currently provides an existing service to FICC, however, this arrangement does not present a conflict of interest because the existing agreement between FICC and the vendor, and the existing agreement between FICC and the vendor's affiliate each contain provisions which limit the sharing of confidential information.

C. Proposed Change To Establish a VaR Floor

FICC is proposing to amend the definition of VaR Charge to include a VaR Floor. The VaR Floor would be employed as an alternative to the amount calculated by the proposed model for portfolios where the VaR Floor would be greater than the model-based charge amount. FICC's proposal to establish a VaR Floor seeks to address the risk that the proposed VaR model may calculate too low a VaR Charge for certain portfolios where the VaR model applies substantial risk offsets among long and short positions in different classes of mortgage-backed securities that have a high degree of historical price correlation. Because this high degree of historical price correlation may not apply in future changing market conditions,[21] FICC believes that

[19] Such historical data may include TBA prices, 3-day movements of interest, option-adjusted spreads, current interest term structure and swaption volatilities.

[20] Under the proposed model, the 10-year look-back period would include the 2008/2009 financial crisis scenario. To the extent that an equally or more stressed market period does not occur when the 2008/2009 financial crisis period is phased out from the 10-year look-back period (*e.g.,* from September 2018 onward), FICC would continue to include the 2008/2009 financial crisis scenario in its historical scenarios. However, if an equally or more stressed market period emerges in the future, FICC may choose not to augment its 10-year historical scenarios with those from the 2008/2009 financial crisis.

[21] For example, and without limitation, certain classes of mortgage-backed securities may have

it is prudent to apply a VaR Floor that is based upon the market value of the gross unsettled positions in the Clearing Member's portfolio in order to protect FICC against such risk in the event that FICC is required to liquidate a large mortgage-backed securities portfolio in stressed market conditions.

D. Vendor Data Disruption

As noted above, FICC intends to source certain sensitivity data and risk factor data from a vendor. FICC's Quantitative Risk Management, Vendor Risk Management, and Information Technology teams have conducted due diligence of the vendor in order to evaluate its control framework for managing key risks. FICC's due diligence included an assessment of the vendor's technology risk, business continuity, regulatory compliance, and privacy controls. FICC has existing policy and procedures for data management that includes market data and analytical data provided by vendors. These policies and procedures do not have to be amended in connection with this proposed rules change. FICC also has tools in place to assess the quality of the data that it receives from vendors.

Rule 1001(c)(1) of Regulation Systems Compliance and Integrity (''SCI'') requires FICC to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI personnel of potential SCI events.[22] Further, pursuant to Rule 1002 of Regulation SCI, each responsible SCI personnel is responsible for determining when there is a reasonable basis to conclude that a SCI event has occurred, which will trigger certain obligations of an SCI entity with respect to such SCI events.[23] FICC has existing policies and procedures which reflect established criteria that must be used by responsible SCI personnel to determine whether a disruption to, or significant downgrade of, the normal operation of FICC's risk management system has occurred as defined under Regulation SCI. These policies and procedures do not have to be amended in connection with this proposed rule change. In the event that the vendor fails to provide the requisite sensitivity data and risk factor data, the responsible SCI personnel would determine whether a SCI event has occurred and FICC would fulfill its obligations with respect to the SCI event.

In connection with FICC's proposal to source data for the proposed sensitivity approach, FICC is also proposing procedures that would govern in the event that the vendor fails to provide sensitivity data and risk factor data. If the vendor fails to provide any data or a significant portion of the data timely, FICC would use the most recently available data on the first day that such data disruption occurs. If it is determined that the vendor will resume providing data within five (5) business days, management would determine whether the VaR Charge should continue to be calculated by using the most recently available data along with an extended look-back period or whether the Margin Proxy should be invoked, subject to the approval of DTCC's Group Chief Risk Officer or his/her designee. If it is determined that the data disruption will extend beyond five (5) business days, the Margin Proxy would be applied, subject to the approval of the MRC followed by notification to FICC's Board Risk Committee.

The Margin Proxy would be calculated as follows: (i) Risk factors would be calculated using historical market prices of benchmark TBA securities and (ii) each Clearing Member's portfolio exposure would be calculated on a net position across all products and for each securitization program (*i.e.,* Federal National Mortgage Association (''Fannie Mae'') and Federal Home Loan Mortgage Corporation (''Freddie Mac'') conventional 30-year mortgage-backed securities, Government National Mortgage Association (''Ginnie Mae'') 30-year mortgage-backed securities, Fannie Mae and Freddie Mac conventional 15-year mortgage-backed securities, and Ginnie Mae 15-year mortgage-backed securities). The Margin Proxy would be used to calculate the VaR Charge by multiplying the risk factor for the Fannie Mae and Freddie Mac conventional 30-year mortgage-backed securities (''base risk factor''), which is the dominant and most liquid portion of the products cleared by FICC, by the absolute value of the Clearing Member's net position across all products, plus the sum of each risk factor spread to the base risk factor multiplied by the absolute value of its corresponding position.[24]

FICC would calculate the Margin Proxy on a daily basis and the Margin Proxy method would be subject to monthly performance review by the MRGC. FICC would monitor the performance of the calculation on a monthly basis to ensure that it could be used in the circumstance described above. Specifically, FICC would monitor each Clearing Member's Required Fund Deposit and the aggregate Clearing Fund requirements versus the requirements calculated by Margin Proxy. FICC would also backtest the Margin Proxy results versus the three-day profit and loss based on actual market price moves. If FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the proposed VaR model, or if the Margin Proxy's backtesting results do not meet FICC's 99 percent confidence level, management may recommend remedial actions to the MRGC, and to the extent necessary the MRC, such as increasing the look-back period and/or applying an appropriate historical stressed period to the Margin Proxy calibration.

E. Proposed Change To Replace the Historic Index Volatility Model With a Haircut Method To Measure the Risk Exposure of Securities That Lack Historical Data

Occasionally, portfolios contain classes of securities that reflect market price changes not consistently related to historical risk factors. The value of these securities is often uncertain because the securities' market volume varies widely, thus the price histories are limited. Since the volume and price information for such securities is not robust, a

highly correlated historical price returns despite having different coupons. However, if future mortgage market conditions were to generate substantially greater prepayment activity for some but not all such classes, these historical correlations could break down, leading to model-generated offsets that would not adequately capture a portfolio's risk.

[22] *See* 17 CFR 242.1001(c)(1).

[23] *See* 17 CFR 242.1002.

[24] To illustrate the Margin Proxy calculation, consider an example where a Clearing Member has a portfolio with a net long position across all products of $2 billion, and the base risk factor is 0.015. Further assume the Clearing Member has a net short position of $30 million in Fannie Mae and Freddie Mac conventional 15-year mortgage-backed securities, and the corresponding risk factor spread to the base risk factor is 0.006; a net short position of $500 million in Ginnie Mae 30-year mortgage-backed securities, and the corresponding risk factor spread is 0.005; and a net long position of $120 million in Ginnie Mae 15-year mortgage-backed securities, and the corresponding risk factor spread is 0.007. In order to generate the Margin Proxy calculation, FICC would multiply the base risk factor by the absolute value of the Clearing Member's net position across all products, plus the sum of each risk factor spread of the subsequent products multiplied by absolute value of the position for the respective product (*i.e.,* ([base risk factor] * ABS[portfolio net position]) + ([CONV15 spread risk factor] * ABS[CONV15 net position]) + ([GNMA30 spread risk factor] * ABS[GNMA30 net position]) + ([GNMA15 Spread Risk Factor] * ABS[GNMA15 Net Position])). The resulting Margin Proxy amount would be $33.52 million.

historical simulation approach would not generate VaR Charge amounts that adequately reflect the risk profile of such securities. Currently, MBSD Rule 4 provides that FICC may use a historic index volatility model to calculate the VaR component of the Required Fund Deposit for these classes of securities. FICC is proposing to amend Rule 4 to replace the historic index volatility model with a haircut method.

FICC believes that the haircut method would better capture the risk profile of these securities because the lack of adequate historical data makes it difficult to map such securities to a historic index volatility model. FICC is proposing to calculate the component of the Required Fund Deposit applicable to these securities by applying a fixed haircut level to the gross market value of the positions. FICC has selected an initial haircut of 1 percent based on its analysis of a five-year historical study of three-day returns during a period that such securities were traded. This percentage would be reviewed annually or more frequently if market conditions warrant and updated, if necessary, to ensure sufficient coverage.

Currently, the classes of securities that lack adequate historical data include balloon Fannie Mae 7-year securities, balloon Freddie Mac 5-year securities and balloon Freddie Mac 7-year securities. FICC has no exposure to these security classes as of the filing date of this proposed rule change and has had negligible exposure over the last several years. However, prudent risk management dictates that FICC maintain appropriate rules to cover potential future exposures.

F. Proposed Change To Eliminate the Coverage Charge Component and the Margin Requirement Differential Component

FICC is also proposing to eliminate the Coverage Charge and MRD components from MBSD's Required Fund Deposit calculation. Both components are based on historical portfolio activity, which may not be indicative of a Clearing Member's current risk profile, but were determined by FICC to be appropriate to address potential shortfalls in margin charges under the existing VaR model.

As part of the development and assessment of the sensitivity approach for MBSD's proposed VaR model, FICC obtained an independent validation of the proposed model by an external party, backtested the model's performance and analyzed the impact of the margin changes. Results of the analysis indicated that the proposed sensitivity approach would be more responsive to changing market dynamics and a Clearing Member's portfolio composition coverage than the existing model. The model validation and backtesting analysis also demonstrated that the proposed sensitivity model would provide sufficient margin coverage on a standalone basis. Because testing and validation of MBSD's proposed VaR model show a material improvement in margin coverage, FICC believes that the Coverage Charge and MRD components are no longer necessary.

G. Description of the Proposed Changes to the Text of the MBSD Rules

The proposed changes to the MBSD Rules are as follows:

- Delete the term ''Coverage Charge'' from Rule 1 because FICC is proposing to eliminate this component from the Clearing Fund calculation.
- Delete the references to the Coverage Charge and the MRD in Rule 4 Section 2(c) because FICC is proposing to eliminate these components from the Clearing Fund calculation.
- Amend the term ''VaR Charge'' to reflect that (x) an alternative volatility calculation would be employed in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time and (y) the VaR Floor would be utilized as the VaR Charge if the proposed VaR methodology yields an amount that is lower than 5 basis points of the market value of a Clearing Member's gross unsettled positions.
- Replace the reference to the ''historic index volatility model'' with ''haircut method'' in Rule 4 Section 2 to reflect the method that would be used for classes of securities where the volatility is less amendable to statistical analysis.

H. Description of the QRM Methodology

The QRM Methodology document provides the methodology by which FICC would calculate the VaR Charge with the proposed sensitivity approach as well as other components of the Required Fund Deposit calculation. The document specifies (i) the model inputs, parameters, assumptions and qualitative adjustments, (ii) the calculation used to generate Required Fund Deposit amounts, (iii) additional calculations used for benchmarking and monitoring purposes, (iv) theoretical analysis, (v) the process by which the VaR methodology was developed as well as its application and limitations, (vi) internal business requirements associated with the implementation and ongoing monitoring of the VaR methodology, (vii) the model change management process and governance framework (which includes the escalation process for adding a stressed period to the VaR calculation), and (viii) the Margin Proxy calculation.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act, requires, in part, that the rules of a clearing agency be designed ''to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible''.[25]

The proposed rule change, which has been described in detail above, consists of proposals to (1) implement the sensitivity approach in order to correct the existing deficiencies in the existing VaR methodology, (2) establish the Margin Proxy as a back-up to the sensitivity approach, (3) establish a VaR Floor as the minimum VaR Charge, (4) apply a haircut to securities that have market price changes that are not consistently related to historical risk factors, and (5) remove the Coverage Charge component and the MRD component from the Required Fund Deposit calculation. These changes have been designed to assure the safeguarding of securities and funds that are in the custody or control of FICC or for which it is responsible. The changes would enable FICC to better limit its credit exposure to Clearing Members arising out of the activity in their portfolios. The proposed changes would work collectively to help ensure that FICC would collect adequate margin from its Clearing Members. Therefore, FICC believes the proposed changes would serve to safeguard the securities and funds that are in the custody and control of FICC or for which it is responsible.

In addition, FICC believes that the proposed rule changes are consistent with the requirements of Rules 17Ad–22(b)(1) and (b)(2) under the Act.[26] Rule 17Ad–22(b)(1) requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.[27] Taken

[25] *See* 15 U.S.C. 78q–1(b)(3)(F).

[26] *See* 17 CFR 240.17Ad–22(b)(1) and (b)(2).

[27] *See* 17 CFR 240.17Ad–22(b)(1).

together, the proposed changes referenced in the previous paragraph would continue FICC's practice of measuring its credit exposures at least once a day and would collectively enhance the risk-based margining framework whose objective would be to calculate each Clearing Member's Required Fund Deposit such that in the event of a Clearing Member's default, its own Required Fund Deposit would be sufficient to mitigate potential losses to FICC associated with the liquidation of such defaulted Clearing Member's portfolio.

Rule 17Ad–22(b)(2) under the Act requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.[28] The proposed changes referenced above in the second paragraph of this section would collectively constitute a risk-based model and parameters that would establish margin requirements for Clearing Members. This risk-based model and parameters would use margin requirements to limit FICC's credit exposure to its Clearing Members by enabling FICC to identify the risk posed by a Clearing Member's unsettled portfolio and to quickly adjust and collect additional deposits as needed to cover those risks. In order to mitigate counterparty exposure to each Clearing Member, under the proposed rule changes, FICC would calculate the VaR of the unsettled obligations of each Member to a 99 percent confidence interval with a three-day liquidation hedge/horizon, as the basis for its Clearing Fund requirement.

Because the proposed changes are designed to calculate each Clearing Member's Required Fund Deposit at a 99 percent confidence level, FICC believes each Clearing Member's Required Fund Deposit would cover its own losses in the event that such Member defaults under normal market conditions.

FICC believes that the proposed changes are consistent with Rules 17Ad–22(e)(4) and (e)(6) of the Act, which were recently adopted by the Commission.[29] Rule 17Ad–22(e)(4) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.[30] The proposed changes referenced above in the second paragraph of this section would enhance FICC's ability to identify, measure, monitor and manage its credit exposures to Clearing Members and those exposures arising from its payment, clearing, and settlement processes. Therefore, FICC believes the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(4), promulgated under the Act, cited above.

Rule 17Ad–22(e)(6) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.[31] FICC's proposal to (1) implement the sensitivity approach in order to correct the existing deficiencies in the existing VaR methodology, (2) establish the Margin Proxy as a back-up to the sensitivity approach, (3) establish a VaR Floor as the minimum VaR Charge, and (4) apply a haircut to securities that have market price changes that are not consistently related to historical risk factors would help FICC to cover its credit exposures to Clearing Members because these proposed changes establish a risk-based margin system that would be monitored by FICC management on an ongoing basis and regularly reviewed, tested, and verified. Therefore, FICC believes that the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(6), promulgated under the Act, cited above.

For these reasons, FICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations promulgated thereunder applicable to FICC, in particular Section 17A(b)(3)(F) of the Act,[32] Rules 17Ad–22(b)(1) and (b)(2), and Rules 17Ad–22(e)(4) and (e)(6) promulgated under the Act,[33] because the changes provide FICC with the ability to better manage the risks associated with a Clearing Member's portfolio, in a manner that assures the safeguarding of securities and funds that are in the custody or control of FICC or for which it is responsible.

(B) *Clearing Agency's Statement on Burden on Competition*

FICC believes that the proposed rule change could have an impact upon competition because implementation of the risk management changes that comprise the proposed rule change would produce changes in the daily calculations of Clearing Members' Required Fund Deposits and thus will either increase or decrease Clearing Members' Required Fund Deposits for each day when compared to the methodology that FICC currently uses. The proposed methodology could both burden competition and promote competition, at different points in time, by altering Clearing Members' Required Fund Deposits. At any point in time when the proposed methodology produces relatively greater increases in Required Fund Deposits for Clearing Members that have lower operating margins or higher costs of capital than other Clearing Members, the proposed change would burden competition. Conversely, when such Clearing Members' Required Fund Deposits are reduced because of the proposed methodology, the change would promote competition. Because (i) all Clearing Members are expected to experience both increases and decreases in Required Fund Deposits compared to the amounts that would be calculated using the current methodology, depending on each Clearing Member's particular portfolio and market conditions, and (ii) no particular category of Clearing Member is expected to experience materially greater increases or decreases than other Clearing Members, FICC believes that the proposed change will not impose a significant burden on competition.

FICC believes that any burden on competition that is created by the proposed rule change is necessary in furtherance of the Act because, as described above, the MBSD Rules must be designed to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.[34] The proposed rule change would support FICC's compliance with Rules 17Ad–22(b)(1) and (2), which

[28] *See* 17 CFR 240.17Ad–22(b)(2).

[29] The Commission adopted amendments to Rule 17Ad–22, including the addition of new section 17Ad–22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14). The amendments to Rule 17ad–22 become effective on December 12, 2016. *Id.* FICC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and must comply with new section (e) of Rule 17Ad–22 by April 11, 2017. *Id.*

[30] *See* Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[31] *Id.*

[32] *See* 15 U.S.C. 78q–1(b)(3)(F).

[33] *See* 17 CFR 240.17Ad–22(b)(1) and (b)(2). *See* Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[34] *See* 15 U.S.C. 78q–1(b)(3)(F).

require FICC to employ policies and procedures reasonably designed to limit its credit exposures to participants and use risk-based models and parameters to set margin requirements.[35] The proposed rule change would also support FICC's compliance with Rules 17Ad–22(e)(4) and (e)(6), which will require FICC to employ policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, and (y) cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.[36] FICC believes that the risk management changes that comprise the proposed rule change are also appropriate in furtherance of the Act because they enhance FICC's methodology for calculating margin requirements by implementing an improved risk-based approach that provides better coverage for FICC with respect to its credit exposures to Clearing Members while reducing Clearing Members' Required Fund Deposits when averaged across time. The financial impact of and risk management benefit of each change is further described below.

Utilization of the proposed sensitivity approach instead of a full revaluation approach is expected generally to generate higher VaR Charges during volatile market periods and lower VaR Charges during normal market conditions. While the degree of impact depends upon each Clearing Member's particular portfolio, Clearing Members that submit similar portfolios will have similar impacts to their VaR Charges during both volatile and normal market conditions. To the extent that a Clearing Member's portfolio may pose a greater risk to FICC than would have been captured under the full revaluation approach, such Clearing Member will have higher VaR Charges, particularly during volatile market conditions. FICC believes that any burden on competition that derives from such increased VaR Charges is necessary in furtherance of the Act because the improved approach corrects the deficiencies in the existing model and it provides better margin coverage for FICC.

FICC conducted a study of the impact of implementing the proposed sensitivity approach on each Clearing Member's portfolio. The study, which covered two and a half years, revealed that the sensitivity approach is more responsive to changing market conditions. In addition, FICC observed that Clearing Members with portfolios reflecting similar net long/short positions, products and maturity characteristics had similar levels of sensitivity to risk factors, which resulted in comparable Required Fund Deposit amounts.

FICC also backtested the performance of the proposed sensitivity approach from January 2013 to February 2016. This analysis revealed that, under the proposed sensitivity approach, the backtesting coverage would have increased for Clearing Members that comprise over 80 percent of FICC's clearance and settlement activity, despite the fact that the average total Required Fund Deposit amount would have been lower for that time period under the proposed model. This improvement was observed for each Clearing Member with respect to its portfolio, product and maturity levels—most notably in the Fannie Mae 30-year products and Freddie Mac 30-year products, which represent approximately 62 percent of FICC's TBA risk exposure. Implementing the proposed sensitivity approach improves the risk-based model that FICC employs to set margin requirements and better limits FICC's credit exposures to participants. FICC therefore believes that any burden on competition that derives from implementing the sensitivity approach is necessary in furtherance of FICC's obligations under the Act and Rules 17Ad–22(b) and (e).[37]

Implementation of the proposed Margin Proxy establishes an alternative methodology that would be used to calculate the VaR Charge in the event of a disruption in the availability of vendor data needed to operate the VaR model with a high degree of confidence using the sensitivities approach. Invocation of the Margin Proxy would likely produce slightly higher VaR Charges for Clearing Members compared to the VaR model if reliable data were available because it would reduce certain risk offsets among portfolio positions. The Margin Proxy is expected to be invoked rarely. Additionally, FICC's ongoing monitoring of the Margin Proxy will ensure that the Margin Proxy, if invoked, would calculate VaR Charges that are reasonably consistent with the sensitivity approach. FICC believes that any burden on competition from the availability of the Margin Proxy as an alternative that FICC may invoke under limited circumstances is appropriate in furtherance of the Act because it ensures that FICC will continue to have a methodology that it could use to calculate the VaR Charge in the event that a vendor data disruption reduces the reliability of the VaR model, thereby better limiting FICC's credit exposures to participants under such circumstances.

The proposed removal of the Coverage Charge and MRD, as a component of the risk management changes that comprise the proposed rule change, would reduce Clearing Members' Required Fund Deposits by eliminating charges that are no longer necessary following implementation of the other changes that comprise the proposed rule change. FICC believes that any burden on competition that derives from eliminating the Coverage Charge and MRD is appropriate in furtherance of the Act because the proposed changes support FICC's implementation of policies and procedures reasonably designed to limit its credit exposures to participants and use of risk-based models to set margin requirements. FICC believes that it should not maintain elements of the prior model that are no longer necessary and would unnecessarily increase Clearing Members' Required Fund Deposits.

The proposed haircut method approach for securities with inadequate historical pricing data could result in higher Required Fund Deposit amounts for portfolios with these classes of securities. FICC believes that any burden on competition that derives from implementing this change is appropriate in furtherance of the Act because the haircut approach provides a better assessment of the risks associated with these securities and therefore would enhance FICC's ability to limit its credit exposures to participants.

Finally, the proposed VaR Floor establishes a minimum VaR Charge for Clearing Members that have portfolios with long and short positions in different classes of mortgage-backed securities that have a high degree of historical price correlation. Implementing the VaR Floor will likely increase Required Fund Deposits for such Clearing Members because such portfolios might generate a lower VaR Charge using the VaR model alone. FICC believes that any burden on competition that derives from this change is necessary in furtherance of the Act because the proposed VaR Floor addresses the risk that the proposed VaR model may calculate too low a VaR Charge for such portfolios. The

[35] *See* 17 CFR 240.17Ad–22(b)(1) and (2).

[36] *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[37] *See* 17 CFR 240.17Ad–22(b). *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

proposed VaR Floor would protect FICC in the event that FICC is required to liquidate a large mortgage-backed securities portfolio in stressed market conditions and therefore would enhance FICC's ability to limit its credit exposures to participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–FICC–2016–007 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–FICC–2016–007. 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 FICC and on FICC's Web site (*http://www.dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2016–007 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29797 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79501; File No. SR–BatsEDGX–2016–68]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Fees for Use of the Exchange's Equities Platform

December 7, 2016.

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 November 30, 2016, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

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 its fee schedule to remove the Cross-Asset Tier under footnote 1, Add Volume Tiers.

The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Currently, the Exchange provides various rebates under footnote 1 of the fee schedule for a Member dependent on the Member's ADV[6] as a percentage

[38] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] As defined in the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/edgx/.*

of the TCV [7] or OCV [8] for orders that yield fee codes B, V, Y, 3, and 4. The Exchange currently has ten Add Volume Tiers under footnote 1. Under such pricing structure, a Member will receive a rebate of anywhere between $0.0025 and $0.0033 per share executed, depending on the tier for which such Member qualifies.

The Exchange now proposes to amend the Add Volume Tiers under footnote 1 to remove an existing tier called the Cross-Asset Tier. Under the Cross-Asset tier, a Member receives an enhanced rebate of $0.0028 per share where that: (i) Member has on the Exchange's equity options trading platform (''EDGX Options'') an ADV in Firm[9] orders equal to or greater than 0.15% of average OCV; and (2) Member has an ADAV[10] equal to or greater than 0.12% of average TCV. The Exchange is proposing to eliminate the tier because the rebate has not achieved the desired effect, despite being designed to incentivize Members to add liquidity in two asset classes, both in EDGX equities and EDGX Options. As such, the Exchange is proposing to eliminate the text in footnote 1 related to the Cross-Asset Tier.

Implementation Date

The Exchange proposes to implement this amendment to its fee schedule on December 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed removal of the Cross-Asset Tier represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because, as described above, the additional rebate offered under this tier is not affecting Members' behavior in the manner originally conceived by the Exchange. While the Exchange acknowledges the benefit of Members entering orders that add liquidity in two asset classes, the Exchange has generally determined that it is providing an additional rebate for liquidity that would be added on the Exchange regardless of whether the tier existed. As such, the Exchange also believes that the proposed elimination of the Cross-Asset Tier would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, it will allow the Exchange to explore other ways in which it may enhance market quality for all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its fee schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposal to remove the Cross-Asset Tier under footnote 1 would burden competition, but, rather, enhance the Exchange's ability to compete with other market centers. As described above, the Exchange believes that it is offering enhanced rebates for orders that would be submitted to the Exchange without the enhanced rebate, which prevents the Exchange from being able to offer other rebates or reduced fees that might be able to enhance market quality to the benefit of all Members. As such, removing the Cross-Asset Tier will allow the Exchange other opportunities to enhance market quality on the Exchange and ultimately, better compete with other market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 [11] and paragraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–68 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–BatsEDGX–2016–68. 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–BatsEDGX–2016–68, and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29806 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[7] *Id.*

[8] As defined in the EDGX Options' fee schedule *available at http://www.bats.com/us/options/membership/fee_schedule/edgx/.*

[9] *Id.*

[10] As defined in the Exchange's fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79497; File No. SR–BatsEDGX–2016–69]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of the Exchange's Equities Options Platform

December 7, 2016.

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 November 30, 2016, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

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 its fee schedule for its equity options platform (''EDGX Options'') to modify the Exchange's routing fee code RR, as further described below. The Exchange currently charges flat rate routing fees for executions at away options exchanges[6] that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs'').

With respect to Customer orders in Non-Penny Pilot Securities, the Exchange applies one of two fee codes: (1) Fee code RP, which results in a fee of $0.25 per contract and applies to all Customer orders (including orders in Penny Pilot Securities) routed to and executed at AMEX, BOX, BX Options, CBOE, ISE Mercury, MIAX or PHLX; or (2) fee code RR, which results in a fee of $1.00 per contract and applies to all Customer orders in Non-Penny Pilot Securities routed to and executed at ARCA, BZX Options, C2, ISE, ISE Gemini or NOM. The Exchange proposes to increase the fee under fee code RR from $1.00 per contract to $1.10 per contract to account for additional Routing Costs incurred by the Exchange. The Exchange does not propose any change to fee code RP.

As set forth above, the Exchange's approach to routing fees is to set forth through the use of certain flat fees that approximate the cost of routing to other options exchanges. The Exchange then monitors the fees charged as compared to the costs of its routing services, as well as monitoring for specific fee changes by other options exchanges, and intends to adjust its flat routing fees and/or groupings to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The increase is proposed primarily in order to account for increased Routing Costs incurred by the Exchange.

Implementation Date

The Exchange proposes to implement this amendment to its fee schedule on December 1, 2016.

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 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

With respect to the proposed increase under the Exchange's routing structure, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive. As explained above, the Exchange seeks to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing, in order to provide a simplified and easy to understand pricing model. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees at groups of away options exchanges. In order to achieve its flat fee structure, taking all costs to the Exchange into account, the Exchange will in some instances charge a higher premium to route to certain options exchanges than to others. As a general matter, the Exchange believes that the proposed fee will allow it to recoup and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] Other options exchanges to which the Exchange routes include: Bats BZX Exchange, Inc. (''BZX Options''), BOX Options Exchange LLC (''BOX''), Chicago Board Options Exchange, Inc. (''CBOE''), C2 Options Exchange, Inc. (''C2''), International Securities Exchange, Inc. (''ISE''), ISE Gemini, LLC (''ISE Gemini''), ISE Mercury, LLC (''ISE Mercury''), Miami International Securities Exchange, LLC (''MIAX''), Nasdaq Options Market LLC (''NOM''), Nasdaq OMX BX LLC (''BX Options''), Nasdaq OMX PHLX LLC (''PHLX''), NYSE Arca, Inc. (''ARCA''), and NYSE MKT LLC (''AMEX'').

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

cover its costs of providing routing services to such exchanges and to make some additional profit in exchange for the services it provides. The Exchange also believes that the proposed increase to the fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members. Finally, the Exchange notes that it intends to consistently evaluate its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to away options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposal is a competitive proposal that is seeking to further the growth of the Exchange and to update the Exchange's fees for routing orders to away options exchanges based on Routing Costs. Additionally, Members may opt to disfavor the Exchange's pricing, including pricing for transactions on the Exchange as well as routing fees, if they believe that alternatives offer them better value. In particular, with respect to routing services, such services are available to Members from other broker-dealers as well as other options exchanges. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[9] Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

[9] *See* Exchange Rule 21.1(d)(7) (describing ''Book Only'' orders) and Exchange Rule 21.9(a)(1) (describing the Exchange's routing process, which requires orders to be designated as available for routing).

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 [10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–69 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–BatsEDGX–2016–69. 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–BatsEDGX–2016–69, and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29802 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79499; File No. SR–CBOE–2016–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend Exchange Rules Related to the Automated Improvement Mechanism

December 7, 2016.

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 November 29, 2016, 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 seeks to amend Exchange Rules related to the Automated Improvement Mechanism. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 6.74A. Automated Improvement Mechanism (''AIM'')

Notwithstanding the provisions of Rule 6.74, a Trading Permit Holder that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction (''Auction'') pursuant to this Rule.

(a)–(b) No change.

. . . Interpretations and Policies:

.01–.02 No change.

.03 [Initially, and for at least a Pilot Period expiring on January 18, 2017, there will be] *There is* no minimum size requirement for orders to be eligible for the Auction. [During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any raw data which is submitted to the Commission will be provided on a confidential basis.]

.04–.05 No change.

.06 [Subparagraph (b)(2)(E) of this rule will be effective for a Pilot Period until January 18, 2017. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, relating to the frequency with which early termination of the Auction occurs pursuant to this provision as well as any other provision, and also the frequency with which early termination pursuant to this provision results in favorable pricing for the Agency Order. Any raw data which is submitted to the Commission will be provided on a confidential basis.] *Reserved.*

.07–.09 No change.

* * * * *

Rule 24B.5A. FLEX Automated Improvement Mechanism

Notwithstanding the provisions of Rule 24B.5, a FLEX Trader that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest and/or against solicited orders provided it submits the Agency Order for execution into the automated improvement mechanism auction (''AIM Auction'') pursuant to this Rule.

(a) AIM Auction Eligibility Requirements. A FLEX Trader (the ''Initiating Trading Permit Holder'') may initiate an AIM Auction provided all of the following are met:

(1) the Agency Order is in a FLEX class designated as eligible for AIM Auctions as determined by the Exchange and within the designated AIM Auction order eligibility size parameters as such size parameters are determined by the Exchange; and

(2) the Initiating Trading Permit Holder must stop the entire Agency Order as principal and/or with a solicited order(s) at the better of the BBO *price improved by one minimum price improvement increment* or the Agency Order's limit price.

(b) No change.

. . . Interpretations and Policies:

.01–.02 No change.

.03 [Initially, and for at least a Pilot Period expiring on January 18, 2017, there will be] *There is* no minimum size requirement for orders to be eligible for the AIM Auction. [During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the AIM Auction. Any raw data which is submitted to the Commission will be provided on a confidential basis.]

.04–.07 No change.

* * * * *

The text of the proposed rule change is also 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

In February 2006, CBOE obtained approval from the Securities and Exchange Commission (the ''Commission'') to adopt the AIM auction process.[3] AIM exposes certain orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that a Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

The Commission approved two components of AIM on a pilot basis: (1) That there is no minimum size requirement for orders to be eligible for the auction; and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).[4]

Eleven extensions to the pilot programs have previously become effective.[5] The pilot program is set to expire on January 18, 2017. The Exchange is seeking permanent approval of the pilot programs.

As evidenced by data submitted to the Commission on a monthly and confidential basis since the pilot programs inception, AIM offers meaningful competition for all size orders. Additionally, there is an active and liquid market functioning on the Exchange outside of AIM. In addition to monthly data provided to the Commission on a confidential basis, the Exchange provided the Commission

[3] *See* Securities Exchange Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–60).

[4] A quote lock occurs when a CBOE Market-Maker's quote interacts with the quote of another CBOE Market-Maker (*i.e.* when internal quotes lock).

[5] *See* Securities Exchange Act Release Nos. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR–CBOE–2006–64); 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) (SR–CBOE–2007–80); 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) (SR–CBOE–2008–76); 60338 (July 17, 2009), 74 FR 36803 (July 24, 2009) (SR–CBOE–2009–051); 62522 (July 16, 2010), 75 FR 43596 (July 26, 2010) (SR–CBOE–2010–067); 64930 (July 20, 2011), 76 FR 44636 (July 26, 2011) (SR–CBOE–2011–066); 67302 (June 28, 2012), 77 FR 39779 (July 5, 2012) (SR–CBOE–2012–061); 69867 (June 27, 2013), 78 FR 40230 (July 3, 2013) (SR–CBOE–2013–066); 72570 (July 9, 2014), 79 FR 41337 (July 15, 2014) (SR–CBOE–2014–054); 75476 (July 16, 2015), 80 FR 43548 (July 22, 2015) (SR–CBOE–2015–068); and 78316 (July 13, 2016) 81 FR 138 (July 19, 2016).

with a summary report (the ''Report''), included herein as Exhibit 3, which demonstrates the price improvement benefits of AIM. Approving the pilot programs on a permanent basis will allow AIM to continue to offer meaningful price improvement and will not have an adverse effect on the market functioning on the Exchange outside of AIM.

Specifically, the Report contains eight categories of non-customer and customer auction data, as well as three categories of summary auction data, during the period January 2015 through June 2015. Each of the eight categories is divided into subcategories based on the spread of the National Best Bid or Offer (''NBBO'') at the time an auction was initiated. The data is further divided into the number of orders that were auctioned within each particular subcategory. Finally, for each subcategory, Exchange identified the per contract price improvement that occurred at each NBBO spread; the average number of participants responding to the auctions plus the initiator; the total volume the initiator received; the average percentage of orders the initiator received; and the percentage of contracts received by the auction initiator.

The various categories contained in the Report include:

(1) Non-Customer Auction/Under 50 Contracts/CBOE not at NBBO
(2) Non-Customer Auction/Under 50 Contracts/CBOE at NBBO
(3) Non-Customer Auction/50 Contracts and over/CBOE not at NBBO
(4) Non-Customer Auction/50 Contracts and over/CBOE at NBBO
(5) Customer Auction/Under 50 Contracts/CBOE not at NBBO
(6) Customer Auction/Under 50 Contracts/CBOE at NBBO
(7) Customer Auction/50 Contracts and over/CBOE not at NBBO
(8) Customer Auction/50 Contracts and over/CBOE at NBBO
(9) Summary of all Non-Customer Auctions for the Period
(10) Summary of all Customer Auctions for the Period
(11) Summary of all Auctions for the Period

The summary of all auctions overwhelming demonstrates that AIM offers competition and price improvement because the vast majority of contracts traded via AIM received price improvement beyond the NBBO. Specifically, with regards to Customer AIM auctions, of the 54,243,091 contracts traded via AIM during the Report period 41,278,408 contracts received price improvement beyond the NBBO.[6] In addition, of the 54,504,717 total contracts traded via AIM during the Report period 41,514,731 contracts received price improvement beyond the NBBO.[7]

Furthermore, the Exchange provided the Commission with data on a monthly and confidential basis on the number of times an AIM auction was terminated early because of a quote lock on the Exchange pursuant to CBOE Rule 6.45A(d). From January 2015 through June 2015, for example, there were less than two auctions ended early per month because of a quote lock. Thus, due to the infrequency with which a quote lock terminates an AIM auction, permanent approval of the pilot program to end AIM auctions early when there is a quote lock on the Exchange will have a de minimis impact on the marketplace. Also, modifying the ''Quote Lock'' [8] timer, which allows quotes from two or more CBOE Market-Makers to remain locked for a given time interval prior to trading with one another, will not impact AIM. The quote lock is what triggers both the Quote Lock timer and the termination of an AIM auction; thus, the length of the Quote Lock timer will not affect AIM.

Additionally, in March 2012, CBOE obtained approval from the Commission to adopt the AIM auction process for FLEX Options.[9] AIM for FLEX Options exposes certain FLEX Options orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The FLEX AIM auction is available only for Agency Orders and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

The Commission approved on a pilot basis the component of AIM for FLEX Options that there is no minimum size requirement for orders to be eligible for the auction.[10] Although Exhibit 3 does not include data regarding AIM for FLEX Options, the Exchange has submitted to the Commission reports providing detailed FLEX AIM auction and order execution data since the Pilot's inception. Five extensions to the pilot program have previously become effective.[11] The pilot program is set to expire on January 18, 2017. The Exchange is seeking permanent approval of the pilot program.

Currently, in order to initiate a FLEX AIM auction the initiating Trading Permit Holder must stop the entire Agency Order as principal and/or with a solicited order(s) at the better of the BBO or the Agency Order's limit price. For purposes of Chapter XXIVB the term ''BBO'' means the best bid or offer, or both, as applicable, entered in response to a Request for Quotes (''RFQ'') [12] or resting in the electronic book.[13] Generally speaking there is no existing BBO prior to a FLEX AIM because there either has not been an RFQ or a FLEX Order with the same terms as the order to be auctioned in FLEX AIM.[14] Thus, the monthly data submitted to the Commission does not show observable price improvement beyond the BBO because generally speaking no BBO exists prior to a FLEX AIM. Although the Exchange has agreed to modify its FLEX AIM rules to require the Agency Order to be stopped at the better of the BBO price improved by one minimum price increment or the Agency Order's limit price, the Exchange does not believe there will be any difference in the way FLEX AIM functions. It's likely that there will continue to be no BBO prior to a FLEX AIM; however, FLEX AIM will continue to offer the possibility for price improvement beyond the initiator's stop price.

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.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

[6] *See* Exhibit 3, pages 46–47.

[7] *See* Exhibit 3, page 47.

[8] *See* Rule 6.45A(d)(i)(B) and RG16–158.

[9] *See* Securities Exchange Release No. 66702 (March 30, 2012), 77 FR 20675 (April 5, 2012) (SR–CBOE–2011–123).

[10] The pilot for the FLEX AIM auction process was modeled after the pilot for non-FLEX Options described above, and included an initial expiration date of July 18, 2012 so that the FLEX pilot would coincide with the existing non-FLEX pilot.

[11] *See* Securities Exchange Act Release No. 67302 (June 28, 2012), 77 FR 39779 (July 5, 2012) (SR–CBOE–2012–061); 69938 (July 5, 2013), 78 FR 41481 (July 10, 2013) (SR–CBOE–2013–069); 72570 (July 9, 2014), 79 FR 41337 (July 15, 2014) (SR–CBOE–2014–054); 75476 (July 16, 2015), 80 FR 43548 (July 22, 2015) (SR–CBOE–2015–068); and 78316 (July 13, 2016) 81 FR 138 (July 19, 2016).

[12] RFQ is defined as the initial request supplied by a Submitting Trading Permit Holder to initiate FLEX bidding and offering. *See* Rule 24B.1(r).

[13] *See* Rule 24B.1(a).

[14] FLEX Order is defined as (i) FLEX bids and offers entered by FLEX Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by FLEX Traders, in each case into the electronic book. *See* Rule 24B.1(j).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change protects investors and the public interest because the AIM and FLEX AIM pilot programs have allowed (1) smaller non-FLEX option and FLEX Option orders to receive the opportunity for price improvement pursuant to the AIM auction, and (2) with respect to non-FLEX options, Agency Orders in AIM auctions that are concluded early because of quote lock on the Exchange to receive the benefit of the lock price. Additionally, as noted above, the AIM pilot program offers meaningful price improvement and making it permanent will not have an adverse effect on the market functioning on the Exchange outside of AIM. Furthermore, although it's likely that there will continue to be no BBO prior to a FLEX AIM, the FLEX AIM mechanism will continue to offer the possibility for price improvement beyond the initiator's stop price and making the pilot permanent will not have an adverse effect on the market functioning on the Exchange outside of AIM.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 does not believe the proposed rule changes impose any burden on intramarket competition because it applies to all Trading Permit Holders. In addition, the Exchange does not believe the proposed rule changes will impose any burden on intermarket competition, as they are merely making pilot programs already in existence permanent and which are available to all market participants through Trading Permit Holders. Additionally, CBOE believes that the AIM and FLEX AIM pilot programs have improved competition because the auction process provides non-customer and customer orders with the opportunity to receive an execution at an improved price.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–084 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–2016–084. 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–CBOE–2016–084, and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29804 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[17] *Id.*

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79496; File No. SR–BatsBZX–2016–83]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of the Exchange's Equity Options Platform

December 7, 2016.

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 November 30, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

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 its fee schedule for its equity options platform (''BZX Options'') to reduce the rebates for: (i) Fee code NF, which is appended to Firm,[6] Broker Dealer,[7] and Joint Back Office,[8] orders in Non-Penny Pilot Securities; [9] (ii) the Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tier 2 under footnote 8; (iii) fee code NN, which is appended to Away Market Maker [10] orders which add liquidity in Non-Penny Pilot Securities; and (iv) the Away Market Maker Non-Penny Pilot Add Volume Tier 1 under footnote 11. Additionally, the Exchange proposes to modify the required criteria for the: (i) NBBO Setter Tier 5 under footnote 4; and (ii) Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tier 3 under footnote 8 and increase the tier's rebate. Lastly, the Exchange proposes to modify the fee codes that may qualify for the additional rebates provided by the NBBO Setter Tiers 1 through 4 under footnote 4.

Fee Code NF

The Exchange proposes to reduce the rebate for fee code NF, under which a Member currently receives a rebate of $0.36 per contract for its Firm, Broker Dealer, and Joint Back Office orders in Non-Penny Pilot Securities that add liquidity. The Exchange proposes to reduce the rebate for fee code NF from $0.36 per contract to $0.30 per contract. The Exchange also proposes to update the Standard Rates table of the fee schedule to reflect the new rebate.

Fee Code NN

The Exchange proposes to reduce the rebate for fee code NN, under which a Member currently receives a rebate of $0.36 per contract for its Away Market Maker orders in Non-Penny Pilot Securities that add liquidity. The Exchange proposes to reduce the rebate for fee code NN from $0.36 per contract to $0.30 per contract. The Exchange also proposes to update the Standard Rates table to reflect the new rebate.

Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tiers

Firm, Broker Dealer, and Joint Back Office orders that add liquidity on the Exchange in Non-Penny Pilot Securities yield fee code NF and currently receive a standard rebate of $0.36 per contract.[11] In addition, footnote 8 of the fee schedule currently sets forth three different tiers, each providing an enhanced rebate ranging from $0.45 to $0.67 per contract to an order that yields fee code NF upon satisfying the monthly volume criteria required by the respective tier.

To qualify for tier 2 and receive a rebate of $0.65 per contract, the Exchange requires a Member has an ADV [12] equal to or greater than 0.25% of average TCV.[13] The Exchange proposes to reduce the rebate provided in tier 2 from $0.65 per contract to $0.60 per contract. The Exchange also proposes to update the Standard Rate table to reflect the new rebate. The Exchange does not propose to amend tier 2's required criteria.

The Exchange proposes to increase the rebate and amend the required criteria for tier 3. To qualify for tier 3 and receive a rebate of $0.67 per contract, the Exchange currently requires a Member to: (1) Have an ADV equal to or greater than 0.40% of average TCV; and (2) have an ADAV [14] in Away Market Maker, Firm, Broker Dealer, and Joint Back Office orders equal to or greater than 0.30% of average TCV. The Exchange proposes to increase the first prong of the tier's criteria to require a Member to have an ADV in equal to or greater than 1.75% of average TCV. In addition, the Exchange proposes to increase the second prong of the tier's criteria to require that a Member also have an ADAV in Away Market Maker, Firm, Broker Dealer, and Joint Back Office orders equal to or greater than 1.25% of average TCV. To reflect the proposed heightened criteria necessary to achieve tier 3, the Exchange proposes to increase the tier's rebate from $0.67 per contract to $0.69 per contract. The Exchange also proposes to update the Standard Rate table to reflect the new rebate.

Away Market Maker Non-Penny Pilot Add Volume Tiers

Away Market Maker orders that add liquidity on the Exchange in Non-Penny Pilot Securities yield fee code NN and currently receive a standard rebate of $0.36 per contract. In addition, footnote 11 of the fee schedule currently sets forth two different tiers, which provide enhanced rebates of $0.45 to $0.52 per contract to orders that yield fee code NN

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] The term ''Firm'' applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction.

[7] The term ''Broker Dealer'' applies to any order for the account of a broker dealer, including a foreign broker dealer that clears in the Customer range at the OCC.

[8] The term ''Joint Back Office'' applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer.

[9] The term ''Non-Penny Pilot Security'' applies to those issues that are quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[10] The term ''Away Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange.

[11] The Exchange proposes in this filing to reduce this rebate to $0.30 per contact as of December 1, 2016.

[12] As set forth in the Exchange's fee schedule, ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[13] As set forth in the Exchange's fee schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close

[14] As set forth in the Exchange's fee schedule, ''ADAV'' means average daily volume calculated as the number of contracts added per day.

upon satisfying monthly volume criteria required by the respective tier. To qualify for tier 1 and receive a rebate of $0.45 per contract, the Exchange currently requires that a Member has an ADV equal to or greater than 0.30% of average TCV. The Exchange proposes to reduce the rebate provided in tier 1 from $0.45 per contract to $0.40 per contract. The Exchange also proposes to update the Standard Rate table to reflect the new rebate. The Exchange does not propose to amend tier 1's required criteria or to modify tier 2 under footnote 11.

NBBO Setter Tiers

The Exchange offers enhanced rebates under footnote 4 to incentivize aggressive quoting by Market Makers on BZX Options. Specifically, the Exchange offers 5 tiers NBBO Setter Tiers under footnote 4 that provide additional rebates ranging from of $0.02 to $0.05 per contract for Market Maker orders that add liquidity and establish a new NBBO (the ''NBBO Setter Rebate'').[15]

First, the Exchange proposes to modify the fee codes that may qualify for the additional rebates provided by the NBBO Setter Tiers 1 through 4 under footnote 4. Currently, the additional rebates under tiers 1 through 4 are provided to orders that yield fee codes PF,[16] PM,[17] PN,[18] NF, NM[19] or NN. Meanwhile, the additional rebate under tier 5 is provided to orders that yield fee codes PF, PM, and PN only. To align the fee codes that may qualify for the additional rebates provided under footnote 4, the Exchange proposes to no longer provide the additional rebates provided by tiers 1 through 4 to orders that yield fee codes NF, NM and NN. As amended, the additional rebates provided under tiers 1 through 5 of footnote 4 will be available to orders that yield fee codes PF, PM, and PN.

Second, the Exchange proposes to amend the required criteria for tier 5 of the NBBO Setter Tier under footnote 4. To qualify for tier 5 and receive an additional rebate of $0.05 per contract, the Exchange currently requires that a Member has an: (1) ADAV in Non-Customer[20] orders equal to or greater than 1.00% of average TCV; and (2) ADV in Non-Customer orders equal to or greater than 1.80% of average TCV. The Exchange proposes to increase the first prong of the tier's criteria to require that a Member has an ADAV in Non-Customer orders equal to or greater than 2.30% of average TCV. As a result of increasing this threshold, the Exchange proposes to remove the second prong of the tier's criteria and, therefore, no longer require Members to also have an ADV in Non-Customer orders equal to or greater than 1.80% of average TCV to achieve the tier.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule December 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[21] in general, and furthers the objectives of Section 6(b)(4),[22] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in that it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and, therefore, are reasonable and equitably allocated to Members.

Fee Codes NN and NF

The Exchange believes that its proposal to reduce the rebates provided by fee codes NN and NF is equitable and reasonable because, while the changes mark a decrease in the rebates for orders that yield fee codes NN or NF, such proposed rebates remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange[23] and does not represent a significant departure from the Exchange's general pricing structure and will allow the Exchange to earn additional revenue that can be used to offset the addition of new pricing incentives. Lastly, the proposed changes to fee codes NN and NF are not unfairly discriminatory because they will apply equally to all Members.

Volume Based Tier Modifications

The Exchange believes that the proposed modifications to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive. The proposed fee structure remains intended to attract order flow to the Exchange by offering market participants a competitive pricing structure. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

Volume-based rebates such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provisions and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes.

The proposed modifications proposed herein are also intended to incentivize additional Members to send orders to the Exchange in an effort to qualify for the enhanced rebate made available by the tiers. The Exchange believes the

[15] An order that is entered at a price that sets a new NBBO according to then current OPRA data will be determined to have set the NBBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

[16] Fee code ''PF'' is appended to Firm, Broker Dealer, and Joint Back Office orders which add liquidity in Penny Pilot options.

[17] Fee code ''PM'' is appended to Market Maker orders which add liquidity in Penny Pilot options.

[18] Fee code ''PN'' is appended to Away Market Maker orders which add liquidity in Penny Pilot options.

[19] Fee code ''NM'' is appended to Market Maker orders which add liquidity in Non-Penny Pilot options.

[20] The term ''Non-Customer'' applies to any transaction which is not identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(4).

[23] The Exchange offers a rebate of $0.36 for Away Market Maker orders which add liquidity in Non-Penny Pilot options, appended with fee code NN. The Nasdaq Stock Market LLC (''Nasdaq'') charges a fee of $0.45 for non-NOM Market Makers orders which add liquidity in non-penny pilot securities.

The Exchange offers a rebate of $0.36 for Firm, Broker Dealer, and Joint Back Office orders which add liquidity in Non-Penny Pilot options, appended with fee code NF. Nasdaq charges a fee of $0.45 for Firm and Broker Dealer orders which add liquidity in Non-Penny Pilot options. *See* the Nasdaq fee schedule *available at http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing*. NYSE Arca, Inc. (''NYSE Arca'') charges a fee of $0.50 for Firm and Broker Dealer orders which add liquidity in Non-Penny Pilot options. *See* the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf*.

proposed change to each tier's criteria is consistent with the Act.

Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tier 2 and 3. As explained above, the Exchange is proposing various slight increases to fees as well as decreases in rebates in order to contribute to the overall profitability of the Exchange. The Exchange believes that its proposal to reduce the rebate in tier 2 and increase the rebate in tier 3 under the Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tiers in footnote 8 is equitable and reasonable as these changes represent a relatively modest adjustment in rates, which is necessary to fund the continued growth of the Exchange. For the same reason, the Exchange believes that the modest corresponding increase to the required criteria threshold for tier 3 is reasonable, fair and equitable and non-discriminatory, specifically because such increase is designed to incentivize participants to further contribute to market quality to the Exchange and the Exchange will be providing a higher enhanced rebates to participants who qualify. The Exchange also believes that the proposed fees and rebates remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange and do not represent a significant departure from the Exchange's general pricing structure.

Away Market Maker Non-Penny Pilot Add Volume Tier 1. The Exchange believes that its proposal to reduce the rebate provided for Away Market Maker Non-Penny Pilot Add Volume Tier 1 under footnote 11 is reasonable, fair and equitable because the reduced rebate is consistent with similar pricing currently offered by the Exchange. Specifically, tier 1 under footnote 10 and tier 1 under footnote 11 have identical required criteria (*i.e.* the Member must have an ADV equal to or greater than 0.30% of average TCV) while providing different rebates (*i.e.,* $0.40 per contract under tier 1 of footnote 10 and $0.45 per contract under tier 1 of footnote 11). Reducing the rebate under tier 1 of footnote 11 would result in the rebate provided for under both tier to be the same. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive. The proposed decreased rebate will allow the Exchange to earn additional revenue that can be used to offset the addition of new pricing incentives. The Exchange also believes the proposed change is not unfairly discriminatory because it will apply equally to all participants.

NBBO Setter Tier 5. The Exchange believes that its proposal to modify the required criteria for the NBBO Setter Tier 5 under footnote 4 is reasonable, fair and equitable because raising the threshold under prong 1 of the required criteria in conjunction with removing the additional requirement under prong 2 results in a similar, but simplified tier requirement which better corresponds to the tier's corresponding rebate. The proposed modifications to tier 5 are also reasonable when compared to the criteria and rebates provided by tier 1 through 4 under footnote 5 [sic]. These modifications also do not mark a significant departure from the Exchange's other NBBO Setter Tiers under footnote 5 [sic], which also generally require a Member satisfy a single criteria. The Exchange also believes the proposed change is not unfairly discriminatory because it will apply equally to all participants.

NBBO Setter Tiers Applicable Fee Codes. The Exchange believes that the proposed modifications to the applicable fee codes of the NBBO Setter Tiers are reasonable, fair and equitable. The Exchange believes it is reasonable, fair and equitable to limit the NBBO Setter Tiers' applicability to orders yielding fee codes applicable to Penny Pilot Securities (thus excluding Non-Penny Pilot Securities) and to orders on behalf of participants that are most likely to actively engage in providing liquidity on the Exchange (thus excluding Customers and Professional Customers).[24] Offering the additional rebates under NBBO Setter Tiers 1 through 4 was not providing the desired result of incentivizing Members to enter orders in Non-Penny Pilot securities that established a new NBBO. Therefore, removing fee codes NF, NM and NN from the NBBO Setter Tier's applicability will have a negligible effect on order flow and market behavior. The Exchange believes it is reasonable to continue to incrementally modify the volume based incentives to help to contribute to the growth of the Exchange. The Exchange also believes the proposed change is not unfairly discriminatory because it will apply equally to all participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that the proposed change to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange. The Exchange also believes the proposal enhances competition by seeking to draw additional volume to BZX Options. Therefore, the Exchange believes that the amendment to the tiers' thresholds as proposed herein, contributes to, rather than burdens competition, as such change is intended to incentivize participants to increase their participation on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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[25] and paragraph (f) of Rule 19b–4 thereunder.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[24] The Exchange notes that when it adopted Tier 5, it limited its applicability to fee codes NF, NM and NN [sic], as it believed those were the fee codes most likely to benefit from the tier's rebate. *See* Securities Exchange Act Release No. 76130 (October 13, 2015), 80 FR 63257 (October 19 2015) (SR–BATS–2015–85).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

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–BatsBZX–2016–83 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–BatsBZX–2016–83. 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–BatsBZX–2016–83 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29801 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79493; File No. SR–NYSE–2016–82]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program

December 7, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 28, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the ''Retail Liquidity Program'' or the ''Program''), which is currently scheduled to expire on December 31, 2016, until June 30, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on December 31, 2016,[4] until June 30, 2017.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.[5] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on December 31, 2016.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and

[4] *See* Securities Exchange Act Release No. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR–NYSE–2016–54).

[5] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (''RLP Approval Order'') (SR–NYSE–2011–55).

the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[6] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[7] Through this filing, the Exchange seeks to amend NYSE Rule 107C(m) and extend the current pilot period of the Program until June 30, 2017.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–82 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–NYSE–2016–82. 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–NYSE–2016–82 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29799 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[6] *See id.* at 40681.

[7] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 28, 2016.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The 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. 34–79492; File No. SR–NASDAQ–2016–121]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of Proposed Rule Change Related to the Payment of a Credit by Execution Access, LLC Based on Volume Thresholds Met on the NASDAQ Options Market

December 7, 2016.

On August 29, 2016, The Nasdaq Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change related to the payment of a credit by Execution Access, LLC that would be based on volume thresholds met on the NASDAQ Options Market LLC. The proposed rule change was published for comment in the **Federal Register** on September 8, 2016.[3] On October 19, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to December 7, 2016.[4] On November 15, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comment letters on the proposed rule change.

On December 5, 2016, the Exchange withdrew the proposed rule change (SR–NASDAQ–2016–121).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29798 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78749 (September 1, 2016), 81 FR 62212.

[4] *See* Securities Exchange Act Release No. 79118, 81 FR 73186 (October 24, 2016).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 79317, 81 FR 83301 (November 21, 2016).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32382; File No. 812–14219]

Goldman Sachs BDC, Inc., et al.; Notice of Application

December 7, 2016.

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Goldman Sachs BDC, Inc. (''BDC I''), Goldman Sachs Private Middle Market Credit LLC (''BDC II''), Goldman Sachs Middle Market Lending LLC (''BDC III,'' and together with BDC I and BDC II, the ''Companies''), and Goldman Sachs Asset Management, L.P. (the ''Adviser''), each on behalf of itself and its successors.[1]

FILING DATES: The application was filed on September 27, 2013, and amended on January 9, 2014, October 9, 2015, January 8, 2016, August 26, 2016, and December 5, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 3, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: David Plutzer, Esq., Goldman Sachs Asset Management L.P., 200 West Street, 15th Floor, New York, NY 10282.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's 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. BDC I is a Delaware corporation organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.[2] BDC II is a Delaware limited liability company organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act. BDC III is a Delaware limited liability company [3] organized as a closed-end management investment company that intends to elect to be regulated as a BDC under section 54(a) of the Act. Each Company's Objectives and Strategies [4] are to generate current income and, to a lesser extent, capital appreciation through debt and equity investments. The business and affairs of each Company is managed under the direction of a Board,[5] a majority of whose members are persons who are Non-Interested Directors.[6]

2. The Adviser, a Delaware limited partnership, is registered with the

[1] For the purposes of the requested order, a ''successor'' includes an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[3] Applicants represent that BDC III intends to convert to a Delaware corporation.

[4] ''Objectives and Strategies'' means a Regulated Fund's (as defined below) investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

[5] The term ''Board'' means, with respect to any Regulated Fund (as defined below), the board of directors of that Regulated Fund.

[6] The term ''Non-Interested Directors'' means, with respect to any Board, the directors who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act.

Commission as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser serves as the investment adviser to each Company and will serve as the investment adviser to each Future Regulated Fund (as defined below).

3. Applicants seek an order (''Order'') to permit a Regulated Fund [7] and one or more other Regulated Funds and/or one or more Affiliated Funds [8] to (a) co-invest with each other in investment opportunities in which the Adviser negotiates terms in addition to price; and (b) make additional investments in such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments'') through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under section 17(d) or section 57(a)(4) and the rules under the Act. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its ''Wholly-Owned Investment Sub,'' as defined below) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more other Regulated Funds and/or one or more Affiliated Funds without obtaining and relying on the Order.[9]

4. Applicants state that a Regulated Fund may, from time to time, form a Wholly-Owned Investment Sub.[10] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any other Regulated Fund or Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

5. The Adviser expects that any portfolio company that is an appropriate investment for a Regulated Fund should also be an appropriate investment for one or more other Regulated Funds and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.[11] When considering Potential Co-Investment Transactions for any Regulated Fund, the Adviser will consider only the Objectives and Strategies, Board-Established Criteria,[12] investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Fund. Applicants believe that the use of Board-Established Criteria for each of the Regulated Funds is appropriate based on the size and scope of the Adviser's advisory business. Applicants argue that in addition to the other protections offered by the conditions, using Board-Established Criteria in the allocation of Potential Co-Investment Transactions will further reduce the risk of subjectivity in the Adviser's determination of whether an investment opportunity is appropriate for a Regulated Fund. In connection with the Board's annual review of the continued appropriateness of any Board-Established Criteria under condition 9, the Regulated Fund's Adviser will provide information regarding any Co-Investment Transaction (including, but not limited to, Follow-On Investments) effected by the Regulated Fund that did not fit within the then-current Board-Established Criteria.

6. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of

[7] ''Regulated Fund'' refers to BDC I, BDC II, BDC III, once it has elected to be regulated as a BDC under the Act, and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as BDC, (b) whose investment adviser is the Adviser, and (c) that intends to participate in the Co-Investment Program (as defined below).

[8] An ''Affiliated Fund'' means an entity (a) whose investment adviser is the Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program. No Affiliated Funds exist at this time.

[9] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[10] The term ''Wholly-Owned Investment Sub'' means an entity (a) whose sole business purpose is to hold one or more investments on behalf of a Regulated Fund (and, in the case of an SBIC Subsidiary (as defined below), maintain a license under the SBA Act (as defined below) and issue debentures guaranteed by the SBA (as defined below)); (b) that is wholly-owned by the Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (c) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (d) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries of the Regulated Fund participating in the Co-Investment Transactions will be Wholly-Owned Investment Subs. The term ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended (the ''SBA Act'') as a small business investment company (an ''SBIC'').

[11] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[12] The term ''Board-Established Criteria'' means criteria that the Board of the applicable Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions which would be within the Regulated Fund's then-current Objectives and Strategies that the Adviser should consider as appropriate for the Regulated Fund. If no Board-Established Criteria are in effect for a Regulated Fund, then the Adviser will consider all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies for that Regulated Fund. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve discretionary assessment. The Adviser may from time to time recommend criteria for the applicable Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Non-Interested Directors. The Non-Interested Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criterion, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

the Act (''Required Majority'') [13] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

7. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

8. No Non-Interested Director of a Regulated Fund will have a direct or indirect financial interest in any Co-Investment Transaction (other than indirectly through share ownership in one of the Regulated Funds), including any interest in any company whose securities would be acquired in a Co-Investment Transaction.

9. Applicants also represent that if the Adviser or its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under condition 14. Applicants believe this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Adviser or its principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

[13] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. (a) The Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that the Adviser identifies for each Regulated Fund all Potential Co-Investment Transactions that (i) the Adviser considers for any other Regulated Fund or Affiliated Fund and (ii) fall within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria.

(b) When the Adviser identifies a Potential Co-Investment Transaction for a Regulated Fund under condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, the Adviser will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1(b) and 2(a), the Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by

each Regulated Fund and each Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with another Regulated Fund or an Affiliated Fund only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's shareholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or any Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Funds or any Affiliated Funds; provided that, if any other Regulated Fund or any Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; and

(B) the Adviser agrees to, and does, provide periodic reports to the Board of the Regulated Fund with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Regulated Fund or any Affiliated Fund or any affiliated person of any Regulated Fund or any Affiliated Fund receives in connection with the right of a Regulated Fund or an Affiliated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who may each, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Adviser, the other Regulated Funds, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any other Regulated Fund or Affiliated Fund during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[14] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor. The Adviser will maintain books and records that demonstrate compliance with this condition for each Regulated Fund.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to another Regulated Fund or an Affiliated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Regulated Fund or an Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Regulated Funds and Affiliated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Regulated Fund's Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Regulated Fund and each Affiliated Fund will bear its own expenses in connection with any such disposition.

8. (a) If a Regulated Fund or an Affiliated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the Adviser will:

[14] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of a Follow-On Investment is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each party's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria, including investments in Potential Co-Investment Transactions made by other Regulated Funds and Affiliated Funds, that the Regulated Fund considered but declined to participate in, and concerning Co-Investment Transactions in which the Regulated Fund participated, so that the Non-Interested Directors may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those Potential Co-Investment Transactions which the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually: (a) The continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions and (b) the continued appropriateness of any Board-Established Criteria.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a business development company and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f).

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Adviser under the investment advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Affiliated Funds and the Regulated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [15] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by the Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Adviser, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of the Adviser, investment advisory fees paid in accordance with the agreements between the Adviser and the Regulated Funds or the Affiliated Funds).

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable State law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29796 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[15] Applicants are not requesting and the staff of the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79498; File No. SR–NYSEArca–2016–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change Relating to Listing and Trading of Shares of the BlackRock Government Collateral Pledge Unit Under NYSE Arca Equities Rule 8.600

December 7, 2016.

On May 19, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the BlackRock Government Collateral Pledge Unit. The proposed rule change was published for comment in the **Federal Register** on June 2, 2016.[3] On July 14, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On August 30, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] On November 25, 2016, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comments on the proposed rule change.

On December 2, 2016, the Exchange withdrew the proposed rule change (SR–NYSEArca–2016–63).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29803 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77941 (May 27, 2016), 81 FR 35425.

[4] *See* Securities Exchange Act Release No. 78328, 81 FR 47222 (July 20, 2016).

[5] *See* Securities Exchange Act Release No. 78728, 81 FR 61260 (September 6, 2016).

[6] *See* Securities Exchange Act Release No. 79398, 81 FR 86749 (December 1, 2016).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32381; File No. 812–14605]

Fidus Investment Corporation, et al.; Notice of Application

December 7, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and under rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit business development companies (''BDCs'') and closed end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Fidus Investment Corporation (the ''Company''), Fidus Credit Opportunities, L.P. (the ''Private Fund''), Fidus Mezzanine Capital, L.P. (''Fidus SBIC''), Fidus Mezzanine Capital II, L.P. (''Fidus SBIC II''), and Fidus Investment Advisors, LLC, on behalf of itself and its successors (''Fidus Advisors'').[1]

FILING DATES: The application was filed on January 27, 2016, and amended on July 8, 2016 and October 27, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 3, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: 1603 Orrington Avenue, Suite 1005, Evanston, IL 60201.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812 or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's 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 Company, a Maryland corporation, is organized as a non-diversified, closed-end management investment company that has elected to be regulated as a BDC.[2] The Company is managed by a board of directors (''Board''), currently comprised of five directors; three of these directors are not, and a majority of the directors at all times will not be, ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Non-Interested Directors'').

2. The Private Fund, a limited partnership under Delaware law, is managed by Fidus Advisors. Applicants state that the Private Fund would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. Applicants state that the Private Fund's investment objectives and policies are substantially similar to the Objectives and Strategies of the Company.[3] To the extent there is an investment that falls within the Objectives and Strategies of one or more Regulated Funds (as defined below) and the investment strategies of one or more other Affiliated Funds (as defined below), the Advisers would expect such Regulated Funds and Affiliated Funds to co-invest with each other.

3. Fidus SBIC and Fidus SBIC II, Delaware limited partnerships, are SBIC

[1] The term ''successor,'' as applied to each Adviser (as defined below), means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[2] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[3] ''Objectives and Strategies'' means a Regulated Fund's investment objectives and strategies, as described in the Regulated Fund's registration statement on Form 10 (or if applicable, Form N–2), other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

Subsidiaries of the Company.[4] Fidus SBIC, a wholly owned subsidiary of the Company, has elected to be regulated as a BDC under the Act.[5] Fidus SBIC II is a Wholly-Owned Investment Sub of the Company.[6] Fidus SBIC II is not registered under the Act, and would be an investment company but for section 3(c)(7) of the Act. The Company may form other SBIC Subsidiaries in the future.

4. Fidus Advisors, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Fidus Advisors serves as investment adviser to the Company (including the assets of Fidus SBIC, Fidus SBIC II and the Private Fund).

5. Applicants seek an order (''Order'') to permit one or more Regulated Funds[7] and/or one or more Affiliated Funds[8] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;[9] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[10]

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs. Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of Section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

7. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (''Available Capital''), and other pertinent factors applicable to that Regulated Fund.[11] The Board of each Regulated Fund, including the Non-Interested Directors has (or will have prior to relying on the requested Order) determined that it is in the best interests of the Regulated Fund to participate in the Co-Investment Transaction.[12]

8. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of

[4] ''SBIC Subsidiary'' means an entity that is licensed by the Small Business Administration (''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (''SBA Act'') as a small business investment company (''SBIC'').

[5] On March 1, 2011, Fidus SBIC filed its registration statement on Form N–5 with the Commission, as a co-registrant with the Company on its registration statement on Form N–2. As a result of the Company's initial public offering and a series of related transactions, Fidus SBIC could be deemed to fail to meet the requirements for exclusion from the definition of an investment company set forth in (1) section 3(c)(1) by reason of subparagraph (A) of section 3(c)(1) and (2) section 3(c)(7) by virtue of the Company's failure to qualify as a ''qualified purchaser'' within the meaning of section 2(a)(51) by virtue of rule 2a51–3(a) of the Act, as the Company could be deemed to have been formed for the purpose of investing in Fidus SBIC. Accordingly, on June 20, 2011, Fidus SBIC filed an election to be regulated as a BDC. The Fidus SBIC Board will consider all Potential Co-Investment Transactions in accordance with the Conditions.

[6] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund and, in the case of an SBIC Subsidiary, maintain a license under the SBA Act and issue debentures guaranteed by the SBA; (iii) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. An SBIC Subsidiary may be a Wholly-Owned Investment Sub if it satisfies the conditions in this definition.

[7] ''Regulated Fund'' means the Company, Fidus SBIC, and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term ''Adviser'' means (a) Fidus Advisors and (b) any future investment adviser that controls, is controlled by, or is under common control with Fidus Advisors and is registered as an investment adviser under the Advisers Act.

[8] ''Affiliated Fund'' means the Private Fund and any Future Affiliated Fund. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[9] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[10] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[11] The amount of each Regulated Fund's Available Capital will be determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Fund or imposed by applicable laws, rules, regulations or interpretations. An Affiliated Fund's capital available for investment will be determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set by the Affiliated Fund's directors, general partners or adviser, or imposed by applicable laws, rules, regulations or interpretations.

[12] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

the Act (''Required Majority'')[13] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

10. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

11. If an Adviser or its principals, or any person controlling, controlled by, or under common control with an Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (other than Fidus SBIC) (''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size, or manner of election. Applicants believe that this will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of an Adviser or its principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. The Non-Interested Directors shall evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-

[13] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o).

Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by Section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[14] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required

[14] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) the amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity; then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in this application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under Section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [15] (including break-up or commitment fees but excluding broker's fees contemplated by Section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund (other than Fidus SBIC), then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors;

(2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

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[15] Applicants are not requesting, and the staff is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79500; File No. SR–MIAX–2016–46]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend Rule 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism

December 7, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2016, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 Exchange Rule 515A, MIAX Price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, 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 515A(a)(1)(iii) to state that, with respect to Agency Orders (as defined below) that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the National Best Bid and Offer (''NBBO'') has a bid/ask differential of $0.01, the System [3] will reject the Agency Order. The Exchange also proposes to make permanent a pilot program that allows orders of less than 50 contracts or 500 mini-option contracts to initiate a PRIME Auction (the ''Pilot''), as described below.

Background

PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (''Agency Order'') against principal interest and/or an Agency Order against solicited interest. The Member that submits the Agency Order (the ''Initiating Member'') agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (''Contra-side Order''). When the Exchange receives a properly designated Agency Order for Auction processing, a Request for Responses (''RFR'') detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange's data feeds. Members may submit responses to the RFR (specifying prices and sizes). RFR responses can be either an Auction or Cancel (''AOC'') order or an AOC eQuote.[4]

Originally, for Agency Orders for less than 50 standard option contracts or 500 mini-option contracts, the Initiating Member was required to stop the entire Agency Order as principal or with a solicited order at the better of the NBBO price improved by a $0.01 increment or the Agency Order's limit price (if the order is a limit order). In addition, to initiate the PRIME Auction for auto-match submissions, the Initiating Member was required to stop the Agency Order for less than 50 standard option contracts or 500 mini-option contracts at the better of the NBBO price improved by a $0.01 increment or the Agency Order's limit price.

In November 2014, MIAX filed to establish a pilot program to allow orders of less than 50 contracts or 500 mini-option contracts to initiate a PRIME Auction (the ''Pilot'').[5] The Pilot allows Agency Orders of any size to initiate a PRIME Auction on MIAX at a price that is at or better than the NBBO. The Exchange has extended the Pilot several times, and the Pilot is currently set to expire January 18, 2017.[6] The Exchange is proposing to make the Pilot permanent, with one modification, as described below.

Proposal

The Exchange is proposing to adopt new Rule 515A(a)(1)(iii) upon the expiration of the current Pilot to establish on a permanent basis that, with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of $0.01,[7] the System will reject the Agency Order. Agency Orders with a size of under 50 contracts will be accepted and processed by the System when the NBBO bid/ask differential is greater than $0.01, and all Agency Orders with a size of 50 contracts or greater will be accepted and processed by the System, regardless of the NBBO bid/ask differential.

Additionally, the Exchange is proposing to delete Interpretations and Policies .08 to Rule 515A. Interpretations and Policies .08 relates to the Pilot, and it states that the minimum size requirement for PRIME Auctions to start at the NBBO is subject to a Pilot Program ending January 18, 2017. Accordingly, the Exchange will continue after that date to accept and process Agency Orders of any size at the NBBO, except when the Agency Order is for a size of less than 50 contracts and the NBBO has a bid/ask differential of $0.01, in which case the System will reject the Agency Order. It also states that the Exchange will submit certain data to the Commission during the Pilot. Because the Pilot is being made permanent (and there is no ''Pilot''), the Exchange will no longer submit the referenced data.

The purpose of providing the referenced data was to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the PRIME, that there is significant price improvement for all orders executed through the PRIME, and that there is an active and liquid market functioning on the Exchange outside of the PRIME.

The Exchange has analyzed this data and believes that there has been meaningful competition for all size orders within the PRIME Auction process, regardless of the size of the order or the bid/ask differential of the NBBO. Specifically from July, 2015 through January, 2016, there were a total of 961,152 PRIME Auctions on MIAX, which included more than 2,691,000 participants, for an average of 2.8 participants per PRIME Auction.[8] Market Makers and other participants have submitted competitive bids and offers during the Response Time Interval and have shown interest in participating in trades stemming from PRIME Auctions, and the Exchange believes that the current allocation algorithm [9] at multiple execution prices or at a single price supports competitive bidding and offering.

The Exchange also believes that the data show that there is an active and liquid market functioning on the Exchange outside of the PRIME.[10]

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] *See* Exchange Rule 515A(a)(2)(i)(D).

[5] *See* Securities Exchange Act Release No. 73590 (November 13, 2014), 79 FR 68919 (November 19, 2014) (SR–MIAX–2014–56).

[6] *See* Securities Exchange Act Release No. 78265 (July 8, 2016), 81 FR 45578 (July 14, 2016) (SR–MIAX–2016–19).

[7] Currently, if the market is locked or crossed as defined in Exchange Rule 1402 for the option, the Agency Order will be rejected by the System prior to initiating an Auction or a Solicitation Auction. *See* Exchange Rule 515A, Interpretations and Policies .09. The Exchange will continue to reject Agency Orders, regardless of their size, in this situation.

[8] *See* Exhibit 3 attached hereto.

[9] After Priority Customer interest at a given price point has been satisfied, remaining contracts are allocated in accordance with the priority rules set forth in Rule 515A(a)(2)(iii).

[10] From July, 2015 through January, 2016, the Exchange executed 7,449,818 transactions for a total of 92,706,999 contracts outside of the PRIME. The

Continued

Competitive bidding and offering occurs outside of the PRIME and participants can submit bids/offers at improved prices or join a bid or offer (thus improving liquidity at that price) regardless of the bid/ask differential of the NBBO.

While the Exchange continues to believe that opportunities remain for price improvement of Agency Orders with a size of less than 50 contracts when the NBBO has a bid/ask differential of $0.01 (*e.g.,* because market conditions may change during the PRIME Auction),[11] the data have not demonstrated significant price improvement in this narrow circumstance, as indicated in the following table:

PRIME Trades for Orders of Less Than 50 Contracts With NBBO Spread of $0.01

[5/1–10/25/2016]

Total Number of Trades	2,383,204	Total Number of Contracts	11,950,538
Trades Receiving Price Improvement	17,179	Contracts Receiving Price Improvement	154,338
Percent of Trades Receiving Improvement	0.72%	Percent of Contracts Receiving Improvement	1.29%

The Exchange does believe, however, that based on the data there is significant price improvement, and significant opportunity for price improvement, for all Agency Orders submitted when the NBBO bid/ask differential is greater than $0.01. The data attached reflect an average price improvement of $0.045 per contract for all contracts executed in PRIME Auctions, regardless of the size of the Agency Order (*i.e.,* less than 50 contracts or greater than 50 contracts).[12] The maximum price improvement for any order can only be $0.01 per contract when the NBBO bid/ask differential is $0.01; the overall average price improvement, which is elevated to $0.045 per contract when considering all NBBO bid/ask differentials (*i.e.,* including where the NBBO bid/ask differential is $0.02 or higher) reflects significant price improvement and opportunity for price improvement when the NBBO bid/ask differential is greater than $0.01 for orders of all sizes.

Moreover, the Exchange believes that, with respect to Agency Orders with a size of 50 contracts or greater, a PRIME Auction provides not only the opportunity for price improvement, but also a legitimate value proposition in certainty of execution. Continuing to allow PRIME Auctions to be initiated by Agency Orders with a size of 50 contracts or greater increases the opportunity for executions of larger size orders.[13] For example, although the NBBO may have an associated size of 50 contracts, those 50 contracts at the best price may be fragmented across several exchanges (*e.g.,* five exchanges disseminating the NBBO price for 10 contracts each). There is no guarantee that a participant wishing to buy or sell 50 contracts can access all of the posted liquidity in a fragmented marketplace in which (in this example) often only 10 contracts are executed on a particular exchange at the NBBO price, and thereafter the other 40 contracts are adjusted to inferior prices on the other exchanges before executing. The Exchange believes that maintaining the PRIME Auction for Agency Orders with a size of 50 contracts or greater when the bid/ask differential at the NBBO is $0.01 enables consolidated size discovery and provides certainty of larger sized executions. The Exchange believes that this represents an efficient way for market participants to access liquidity for larger sized orders. Therefore, the Exchange believes that it is appropriate to continue to support the acceptance of Agency Orders with a size of 50 contracts or greater, regardless of the bid/ask differential of the NBBO, even at $0.01, both now and in the future.

Based on its review of the data, the Exchange believes that there is meaningful competition for all size orders within the PRIME, that there is significant price improvement for all orders executed through the PRIME (except for Agency Orders with a size of less than 50 contracts that are entered into the PRIME Auction when the NBBO has a bid/ask differential of $0.01), and that there is an active and liquid market functioning on the Exchange outside of the PRIME. Accordingly, the Exchange proposes to adopt Rule 515A(a)(1)(iii) upon the expiration of the Pilot to establish on a permanent basis that, with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of $0.01, the System will reject the Agency Order.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change fosters cooperation and coordination with persons engaged in facilitating transactions in securities because, based on its communication with the Commission, the Exchange believes that all U.S. options exchanges will file similar proposals to address the handling of Agency Orders received with a size of under 50 contracts when the NBBO has a bid/ask differential of $0.01.

The proposed rule change removes impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by way of meaningful competition for all size orders within the PRIME Auction process, regardless of the size of the order or the bid/ask differential of the NBBO. Further, with respect to Agency Orders with a size of 50 contracts or greater, the PRIME Auction process perfects the

Exchange believes that this represents an active and liquid market functioning on the Exchange outside of the PRIME.

[11] For example, assume the NBBO is $1.00 bid, $1.01 offer and an Agency Order is submitted into MIAX PRIME to buy 20 contracts at $1.01. The Exchange believes that there is still a chance, however slight, that during the Response Time Interval the offer price could change to $1.00, and the Agency Order, while guaranteed an execution at $1.01, could buy 20 contracts at $1.00.

[12] *See* Exhibit 3 attached hereto.

[13] According to the Options Clearing Corporation (''OCC''), for the year-to-date through September 2016 there were 130, 573,030 transactions for a total of 1,473,152,154 contracts traded, for an average execution size of 11.3 contracts.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

mechanisms of a free and open market and a national market system by providing meaningful price improvement for orders executed through PRIME, regardless of the NBBO bid/ask differential. Additionally, the proposal protects investors and the public interest by showing that there is an active and liquid market functioning on the Exchange outside of the PRIME.

Furthermore, the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system by establishing the new manner in which the Exchange will handle Agency Orders received with a size of under 50 contracts when the NBBO has a bid/ask differential of $0.01.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The PRIME Auction enables the Exchange to compete for order flow with other exchanges that have similar price improvement mechanisms in place. As stated above, the Exchange believes that there is meaningful competition in PRIME Auctions for all size orders, there are opportunities for significant price improvement for orders executed through PRIME, and that there is an active and liquid market functioning on the Exchange outside of PRIME.

The Exchange believes that approving the Pilot on a permanent basis will not significantly impact competition, as it will continue to accept and process Agency Orders for potential price improvement except in the very limited circumstance where the Agency Order is for a size of less than 50 contracts and the NBBO bid/ask differential is $0.01.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2016–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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–MIAX–2016–46 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29805 Filed 12–12–16; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79495; File No. SR–NYSEARCA–2016–157]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program

December 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 28, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, on behalf of its wholly-owned corporation, NYSE Arca Equities, Inc., proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the ''Retail Liquidity Program'' or the ''Program''), which is currently scheduled to expire on December 31, 2016, until June 30, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on December 31, 2016,[4] until June 30, 2017.

Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.[5] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Equities Rule 7.44(m), the pilot period for the Program is scheduled to end on December 31, 2016.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[6] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[7] Through this filing, the Exchange seeks to amend NYSE Arca Equities Rule 7.44(m) and extend the current pilot period of the Program until June 30, 2017.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[4] *See* Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 57632 (August 23, 2016) (SR–NYSEArca–2016–113).

[5] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (''RLP Approval Order'').

[6] *See* RLP Approval Order, *supra* n. 4, 78 FR at 79529.

[7] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 28, 2016.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(2)(B).

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–NYSEARCA–2016–157 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–NYSEARCA–2016–157. 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–NYSEARCA–2016–157 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29800 Filed 12–12–16; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79502; File No. SR–IEX–2016–18]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change to: (i) Amend Rules 11.190(a)(3) and 11.190(b)(8) To Modify the Operation of the Primary Peg Order Type; (ii) Amend Rule 11.190(h)(C)(ii) and (D)(ii) Regarding Price Sliding in Locked and Crossed Markets To Simplify the Price Sliding Process for Both Primary Peg Orders and Discretionary Peg Orders Resting on or Posting to the Order Book; and (iii) Make Minor Housekeeping Changes To Conform Certain Terminology

December 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 2016, the Investors Exchange LLC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b-4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') proposed rule changes to (i) amend Rules 11.190(a)(3) and 11.190(b)(8) to modify the operation of the primary peg order type; (ii) amend Rule 11.190(h)(C)(ii) and (D)(ii) [sic] regarding price sliding in locked and crossed markets to simplify the price sliding process for both primary peg orders and Discretionary Peg orders resting on or posting to the Order Book; and (iii) make minor housekeeping changes to conform certain terminology.

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Background

The purpose of the proposed rule change is to amend Rules 11.190(a)(3) and 11.190(b)(8) to modify the operation of the primary peg order type offered by the Exchange, and to amend Rule 11.190(h)(C)(ii) and (D)(ii) [sic] regarding price sliding in locked and crossed markets to simplify the price sliding process for both primary peg orders and Discretionary Peg orders resting on or posting to the Order Book.

Currently, the Exchange offers three types of pegged orders—primary peg, midpoint peg and discretionary peg—each of which are non-displayed orders that upon entry into the System and while resting on the Order Book, are pegged to a reference price based on the national best bid and offer (''NBBO'') and the price of the order is automatically adjusted by the System in response to changes in the NBBO. As set forth in Rule 11.190(b)(8), a primary peg order is a pegged order that upon entry and when posting to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the primary quote (*i.e.,* the national best bid (''NBB'') for buy orders and the national best offer (''NBO'') for sell orders) or the order's limit price, if any. While resting on the Order Book, the order is automatically adjusted by the System in response to the changes in the NBB (NBO) for buy (sell) orders up (down) to the order's limit price, if any.

In the event the NBBO becomes locked or crossed, primary peg orders, as well as Discretionary Peg orders, resting on or posting to the Order Book are priced to the less aggressive of either the prior non-locked or non-crossing near side quote (*i.e.,* the prior unlocked

or uncrossed NBB (NBO) for buy (sell) orders), or one (1) MPV less aggressive than the locking or crossing price.[6]

Overview

The Exchange proposes to modify the operation of the primary peg order type. The order type as revised is a non-displayed order designed to enable a Member (or customer thereof) to rest trading interest on the Order Book at a price inferior to the primary quote and remain available to execute against an incoming order seeking to cross the spread and execute at prices equal to or more aggressive (from the taker's perspective) than such quote, while avoiding adverse selection when the market appears to be moving against the resting primary peg order (*i.e.,* moving lower in the case of a buy order or higher in the case of a sell order). As described more fully below, the primary peg order as proposed combines the offset feature of the Primary Pegged Order offered by BATS BZX Exchange, Inc (''BZX'')[7] with the price improvement opportunities and protections offered by the Exchange's existing Discretionary Peg order.[8] Specifically, the primary peg order as proposed offers Members an opportunity to rest one (1) MPV less aggressive than the primary quote (*i.e.,* one (1) MPV below the NBB for buy orders or one (1) MPV above the NBO for sell orders) but remain eligible to exercise price discretion up (down) to the NBB (NBO) for buy (sell) orders, and is designed to protect such orders from unfavorable executions by preventing the exercise of such price discretion when the Exchange has determined that the market is moving against the order *(i.e.,* a crumbling quote is detected). In addition, the Exchange proposes to simplify the price sliding process for both primary peg orders and Discretionary Peg orders resting on or posting to the Order Book so that such orders will slide to one MPV less aggressive than the locking or crossing price (*i.e.,* higher for a sell order and lower for a buy order) rather than remaining at the prior non-locked or non-crossed price when such price is less aggressive.

The Exchange notes that the primary peg order type has received modest usage by Members, and at the same time, the Exchange has observed that spread crossing interest entered on the Exchange is sometimes unable to find sufficient resting interest willing to trade at the far-side primary quote. The Exchange believes (based in part on informal discussions with liquidity providing Members) that the primary peg order type as revised, which is designed to prevent adverse selection in unstable market conditions, will incentivize passive resting liquidity priced to execute at the primary quote on the Exchange, and consequently may result in greater execution opportunities at the far side quote for Members entering spread crossing orders.

Description of Proposed Rule Change

As proposed, Rule 11.190(b)(8) provides that (i) a primary peg order will, upon entry and when posting to the Order Book, be automatically adjusted by the System to be equal to and ranked at the less aggressive of one (1) minimum price variant (''MPV'')[9] less aggressive than the primary quote (*i.e.,* one MPV below (above) the NBB (NBO) for buy (sell) orders) or the order's limit price, as applicable; (ii) exercise price discretion up (down) to the NBB (NBO) for buy (sell) orders, except during periods of quote instability as defined in Rule 11.190(g); and (iii) in locked and crossed markets, slide one MPV less aggressive than the locking price or crossing price (*i.e.,* the lowest Protected Offer for buy orders and the highest Protected Bid for sell orders).[10]

As is the case with Discretionary Peg orders, Rule 11.190(b)(8) would provide that a primary peg order would maintain time priority at its resting price, and be prioritized behind any non-displayed interest resting at the NBB (NBO) for buy (sell) orders (*i.e.,* the ''primary quote'') for the duration of the book processing action in which it is exercising discretion. If multiple primary peg orders are exercising discretion during the same book processing action, they would maintain their relative time priority when executing at the primary quote.

As proposed, the manner in which a primary peg order will exercise price discretion is similar to the manner in which a Discretionary Peg order exercises price discretion. As set forth in Rule 11.190(b)(10), a Discretionary Peg order pegs to the less aggressive of the primary quote (*i.e.,* NBB for buy orders and NBO for sell orders) or the order's limit price, if any, but, in order to meet the limit price of an active order, will exercise price discretion up to the less aggressive of the Midpoint Price[11] or the order's limit price, if any. However, a Discretionary Peg order will not exercise such price discretion during periods of quote instability as defined in Rule 11.190(g).[12] Similarly, as proposed a primary peg order will exercise discretion in order to meet the limit price of an active order up to the NBB (for buy orders) or down to the NBO (for sell orders), except during periods of quote instability as defined in Rule 11.190(g), or if the order is resting at its limit price, if any.

The Exchange also proposes to amend Rule 11.190(h)(C)(ii) and (D)(ii) [sic] regarding price sliding in locked and crossed markets to simplify the price sliding process for both primary peg orders and Discretionary Peg orders resting on or posting to the Order Book. As proposed, such orders will slide to one MPV less aggressive than the locking or crossing price (*i.e.,* higher for a sell order and lower for a buy order) rather than remaining at the prior non-locked or non-crossed price when such price is less aggressive. If a primary peg order is submitted while the market is crossed, the order would post to the Order Book priced one (1) MPV less aggressive than the crossing price, the

[6] *See,* Rule 11.190(h)(C)(ii) and (D)(ii) [sic].

[7] *See* BZX Rule 11.9(c)(8).

[8] *See,* Rule 11.190(b)(10).

[9] *See,* Rule 11.210.

[10] The proposed changes to the price sliding process in locked and crossed markets would also apply to Discretionary Peg orders.

[11] *See,* Rule 1.160(t).

[12] As set forth in Rule 11.190(g), in determining whether a crumbling quote exists, the Exchange utilizes real time relative quoting activity of Protected Quotations and a proprietary mathematical calculation (the ''quote instability calculation'') to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security (''quote instability factor''). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined threshold (''quote instability threshold''), the System treats the quote as not stable (''quote instability'' or a ''crumbling quote''). During all other times, the quote is considered stable (''quote stability''). The System independently assesses the quote stability of the Protected NBB and Protected NBO for each security. When the System determines that a quote, either the Protected NBB or the Protected NBO, is unstable, the determination remains in effect at that price level for ten (10) milliseconds. The System will only treat one side of the Protected NBBO as unstable in a particular security at any given time. By not permitting resting Discretionary Peg orders to execute at a price that is more aggressive than the near-side protected NBB or NBO (as applicable) during periods of quote instability, the Exchange System is intended to attempt to protect such orders from unfavorable executions when the market is moving against them. Once the market has moved and the Exchange System deems the near-side Protected NBB or NBO (as applicable) to be stable (pursuant to a pre-determined, objective set of conditions as described below), Discretionary Peg orders are permitted to exercise discretion up to (for buy orders) or down to (for sell orders) the midpoint of the NBBO in order to meet the limit price of active orders on the order book and thereby potentially provide price improvement to such active orders. Quote stability or instability (also referred to as a crumbling quote) is an assessment that the Exchange System makes on a real-time basis, based on a pre-determined, objective set of conditions specified in Rule 11.190(g)(1).

lowest Protected Offer for buy orders and the highest Protected Bid for sell orders. The Exchange notes that the goal of this provision is to ensure that primary peg and Discretionary Peg orders do not rest at locking or crossing prices. The Exchange believes that the variability of the existing approach is unnecessarily complicated, without any material benefit, and requires both the Exchange System and Member systems to keep track of the prior non-locked/non-crossed price. Therefore, the Exchange believes that simplifying the price sliding processing for primary peg and Discretionary Peg orders is appropriate in this respect since it would accomplish the goal of sliding such orders to a non-locked/non-crossed price.

The Exchange does not propose to amend the order modifiers and parameters currently applicable to primary peg orders as set forth in Rule 11.190(b)(8)(A)–(J), and such order modifiers and parameters would apply to primary peg orders as revised. Specifically, currently and as proposed, a primary peg order: (i) Must be a pegged order; (ii) must have a time-in-force (''TIF'') of DAY, GTT, GTX, or SYS; [13] (iii) is not eligible for routing; [14] (iv) may not be an intermarket sweep order; [15] (v) may be submitted with a limit price, or without a limit price; (vi) is eligible to trade only during the Regular Market Session; (vii) may be a minimum quantity order; [16] (viii) is not eligible to be displayed by the System; (ix) may be an odd lot, round lot, or mixed lot; and (x) is not eligible to be invited by the System to Recheck, as described in Rule 11.230(a)(4)(D).

Finally, the Exchange proposes to make a minor conforming housekeeping change to Rule 11.190(h)(D)(ii) [sic] to refer to the ''crossing price'' rather than ''crossed quote'' to be consistent with other references within the rule.

Implementation

The Exchange plans to implement the proposed changes during the first quarter of 2017 pending completion of necessary technology changes and subject to Commission approval. The Exchange will announce the implementation date of the proposed changes by Trader Alert at least 5 business days in advance of such implementation date and within 90 days of approval of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) [17] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, IEX believes that the proposal is consistent with protection of investors and the public interest in that the primary peg order type is designed to assist Members in obtaining best execution for their customers (and proprietary orders) by providing an opportunity to execute at the NBBO, but limiting executions at the NBBO when the NBBO is not stable, thereby reducing the potential to execute at a stale price. Moreover, as discussed above, the primary peg order, as proposed, combines key attributes of the Primary Pegged Order offered by BZX, in that both order types offer Members an opportunity to rest more passively than the primary quote, and the discretionary price improvement attributes of the Exchange's Discretionary Peg order type. Thus, IEX does not believe that the primary peg order type raises any new or novel issues that have not already been considered by the Commission in connection with existing order types of IEX and BZX.[19] In particular, IEX notes that, in connection with its grant of IEX's application for registration as a national securities exchange under Sections 6 and 19 of the Act, the Commission specifically found IEX's order type rules, including those providing for a Discretionary Peg order to exercise price discretion only when the quote appears to be stable, to be consistent with the Act and, in particular, the Section 6(b)(5) requirement that the Exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.[20] Accordingly, the Exchange believes that providing the same price discretion to primary peg orders is similarly consistent with the protection of investors and the public interest.

The Exchange also believes that the proposed priority rules for primary peg orders are designed to protect investors and the public interest because the proposed priority rules are identical to those for Discretionary Peg orders.[21] As noted above, the Commission has already considered the Exchange's Discretionary Peg order type in connection with its grant of IEX's application for registration as a national securities exchange under Sections 6 and 19 of the Act, and specifically found IEX's order type rules to be consistent with the Act and, in particular, the Section 6(b)(5) requirement that the exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.[22] Accordingly, the Exchange does not believe that applying these priority rules to primary peg orders raises any new or novel issues that have not already been considered by the Commission, and is thus consistent with the protection of investors and the public interest.

The Exchange also believes that simplifying the operation of price sliding primary peg orders in a locked or crossed market is consistent with the protection of investors and the public interest by making the Exchange's rules more clear and transparent, and removing the variability of a primary peg orders booked price in situations where the market becomes locked or crossed. Specifically, rather than price sliding such orders at the less aggressive of either the prior unlocked or uncrossed near side quotation, or one MPV less aggressive than the locking or crossing price, the Exchange will simply slide such orders one MPV less aggressive than the locking or crossing price, creating a simple, transparent process for price sliding such orders.

Finally, the Exchange believes that the minor conforming housekeeping change to Rule 11.190(h)(D)(ii) [sic] to

[13] *See,* Rule 11.190(a)(3). A primary peg order with a TIF of GTT, GTX or SYS entered before the opening of the Regular Market Session will be rejected. A primary peg order with a TIF of DAY entered before the opening of the Regular Market Session will be queued in the System until the start of the Regular Market Session.

[14] *See,* Rules 11.230(b) and (c)(2).

[15] *See,* Rule 11.190(b)(12).

[16] *See,* Rule 11.190(b)(11).

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] See also NYSE Arca Equities Rule 7.31P(h) [sic] which provides for a Discretionary Pegged order type based on IEX's Disretionary Peg order type.

[20] *See* Securities Exchange Act Release No. 34–78101 at 47 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222).

[21] *See* IEX Rule 11.190(b)(10).

[22] *See supra,* note 20.

refer to ''crossing price'' rather than ''crossed quote'' is consistent with the protection of investors and the public interest because it will make the applicable rule text more clear by eliminating inconsistent verbiage to describe the same concept.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will offer the primary peg order type equally to all IEX Members. Furthermore, the Exchange does not believe that allowing primary peg orders to exercise discretion in stable markets, using the formula set forth in IEX Rule 11.190(g), will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission has already considered the Exchange's Discretionary Peg order type in connection with its grant of IEX's application for registration as a national securities exchange under Sections 6 and 19 of the Act.[23] The proposed rule change is designed to extend the benefits of the quote stability calculation to Members using the primary peg order type to prevent unfavorable executions in crumbling markets; therefore, no new burdens are being proposed.

The Exchange also does not believe that the proposed primary peg order type will result in any burden on Members seeking to cross the spread and execute at the far side quote (the NBO (NBB) for buy (sell) orders), because the benefits and protections offered by the proposed primary peg order type, which is designed to prevent adverse selection in unstable market conditions, is intended to incentivize passive resting liquidity priced to execute at the primary quote on the Exchange, and consequently may result in greater execution opportunities at the far side quote for Members entering spread crossing orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[23] *See supra,* note 20.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File SR–IEX–2016–18 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–IEX–2016–18. 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–IEX–2016–18 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29807 Filed 12–12–16; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, December 15, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Formal order of investigations;
- Resolution of litigation claims;
- Adjudicatory matters; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: December 8, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–29965 Filed 12–9–16; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9819]

Request for Information for the 2017 Trafficking in Persons Report

SUMMARY: The Department of State (''the Department'') requests written information to assist in reporting on the degree to which the United States and foreign governments meet the minimum standards for the elimination of trafficking in persons (''minimum standards'') that are prescribed by the Trafficking Victims Protection Act of 2000 (Div. A, Pub. L. 106–386), as amended (''TVPA''). This information will assist in the preparation of the *Trafficking in Persons Report* (''*TIP Report*'') that the Department submits annually to the U.S. Congress on government efforts to meet the minimum standards. Foreign governments that do not meet the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by January 25, 2017. Please refer to the **ADDRESSES**, *Scope of Interest,* and *Information Sought* sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by 5 p.m. on January 25, 2017.

ADDRESSES: Written submissions and supporting documentation may be submitted by the following methods:

- *Email (preferred): tipreport@state.gov* for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.
- *Facsimile (fax):* 202–312–9637
- *Mail, Express Delivery, Hand Delivery and Messenger Service:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons (J/TIP), 1800 G Street NW., Suite 2201, Washington, DC 20520. Please note that materials submitted by mail may be delayed due to security screenings and processing.

Scope of Interest: The Department requests information relevant to assessing the United States' and foreign governments' efforts to meet the minimum standards for the elimination of trafficking in persons during the reporting period (April 1, 2016–March 30, 2017). The minimum standards for the elimination of trafficking in persons are listed in the *Background* section. Submissions must include information relevant to efforts to meet the minimum standards for the elimination of trafficking in persons and should include, but need not be limited to, answering the questions in the *Information Sought* section. Only those questions for which the submitter has direct professional experience should be answered and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state, and federal government efforts. To the extent possible, precise dates and numbers of officials or citizens affected should be included.

Where applicable, written narratives providing factual information should provide citations of sources, and copies of the source material should be provided. If possible, send electronic copies of the entire submission, including source material. If primary sources are used, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, provide details on the research or data-gathering methodology. The Department does not include in the *Report,* and is therefore not seeking, information on prostitution, human smuggling, visa fraud, or child abuse, unless such conduct occurs in the context of trafficking in persons as defined in the TVPA.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the *Report* information concerning sources to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. When applicable, portions of submissions relevant to efforts by other U.S. government agencies may be shared with those agencies.

Response: This is a request for information only; there will be no response to submissions.

SUPPLEMENTARY INFORMATION:

I. Background

The TIP Report: The *TIP Report* is the most comprehensive worldwide report on governments' efforts to combat trafficking in persons. It represents an annually updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. government uses the *Report* to engage in diplomacy, to encourage partnership in creating and implementing laws and policies to combat trafficking, and to target resources on prevention, protection, and prosecution programs. Worldwide, the *Report* is used by international organizations, foreign governments, and nongovernmental organizations as a tool to examine where resources are most needed. Prosecuting traffickers, protecting victims, and preventing trafficking are the ultimate goals of the *Report* and of the U.S government's anti-trafficking policy.

The Department prepares the *TIP Report* using information from across the U.S. government, foreign government officials, nongovernmental and international organizations, published reports, and research trips to every region. The *Report* focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and sentences for traffickers, as well as victim protection measures and prevention efforts. Each *Report* narrative also includes recommendations for each country. These recommendations are used to assist in measuring governments' progress from one year to the next and determining whether governments meet the minimum standards for the elimination of trafficking in persons or are making significant efforts to do so.

The TVPA creates a four-tier ranking system. Tier placement is based principally on the extent of government action to combat trafficking. The Department first evaluates whether the government fully meets the TVPA's minimum standards for the elimination of trafficking. Governments that do so are placed on Tier 1. For other governments, the Department considers the extent of such efforts. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully meet the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, places countries on Tier 2 Watch List.

For more information, the 2016 *TIP Report* can be found at *http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm.*

Since the inception of the *TIP Report* in 2001, the number of countries included and ranked has more than doubled; the 2016 *TIP Report* included 188 countries and territories. Around the world, the *TIP Report* and the promising practices reflected therein have inspired legislation, national action plans, policy implementation, program funding, protection mechanisms that complement prosecution efforts, and a stronger global understanding of this crime.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking (''AG Report'') mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). Since 2010, the *Report,* through a collaborative interagency process, has included an analysis of U.S. government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons; measures to establish the identity of local populations, including birth registration, citizenship, and nationality; measures to ensure that its nationals who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking; a transparent system for remediating or punishing such public officials as a deterrent; measures to prevent the use of forced labor or child labor in violation of international standards; effective bilateral, multilateral, or regional information-sharing and cooperation arrangements with other countries; and effective policies or laws regulating foreign labor recruiters and holding them civilly and criminally liable for fraudulent recruiting.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons and has entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with other countries.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats and soldiers, who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. A government's failure to appropriately address public allegations against such public officials,

especially once such officials have returned to their home countries, shall be considered inaction under these criteria. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government has entered into effective, transparent partnerships, cooperative agreements, or agreements that have resulted in concrete and measureable outcomes with—

(A) domestic civil society organizations, private sector entities, or international non-governmental organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers or

(B) the United States toward agreed goals and objectives in the collective fight against trafficking.

(10) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(11) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(12) Whether the government of the country has made serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience. Citations to source material should also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section for detailed information regarding submission requirements.

1. How have trafficking methods changed in the past 12 months? For example, are there victims from new countries of origin? Is internal trafficking or child trafficking increasing? Has sex trafficking changed, for example from brothels to private apartments? Is labor trafficking now occurring in additional types of industries or agricultural operations? Is forced begging a problem? Does child sex tourism occur in the country or involve its nationals abroad, and if so, what are their destination countries?

2. What were the government's major accomplishments in addressing human trafficking?

3. What were the greatest deficiencies in the government's anti-trafficking efforts? What were the limitations on the government's ability to address human trafficking problems in practice?

4. In what ways has the government's efforts to combat trafficking in persons changed in the past year? What new laws, regulations, policies, and implementation strategies exist (*e.g.,* substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally and in relation to court proceedings)?

5. Please provide observations regarding the implementation of existing laws and procedures. Are there laws criminalizing those who knowingly solicit or patronize a trafficking victim to perform a commercial sex act and what are the prescribed penalties?

6. Are the anti-trafficking laws and sentences strict enough to reflect the nature of the crime?

7. Please provide observations on overall anti-trafficking law enforcement efforts and the efforts of police and prosecutors to pursue trafficking cases. Is the government equally vigorous in pursuing labor trafficking and sex trafficking? Please note any efforts to investigate and prosecute suspects for knowingly soliciting or patronizing a sex trafficking victim to perform a commercial sex act.

8. Do government officials understand the nature of trafficking? If not, please provide examples of misconceptions or misunderstandings.

9. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? What sentences have courts imposed upon traffickers? How common are suspended sentences and prison time of less than one year for convicted traffickers?

10. What was the extent of official complicity in trafficking crimes? Were officials operating as traffickers (whether subjecting persons to forced labor and/or sex trafficking offenses) or taking actions that may facilitate trafficking (including accepting bribes to allow undocumented border crossings or suspending active investigations of suspected traffickers, etc.)? Were there examples of trafficking occurring in state institutions (*e.g.,* prisons, child foster homes, institutions for mentally or physically disabled persons)? What proactive measures did the government take to prevent official complicity in trafficking in persons crimes? How did the government respond to reports of complicity that arose during the reporting period?

11. Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals of the country deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate trafficking, including domestic servitude?

12. Has the government investigated, prosecuted, convicted, and sentenced members of organized crime groups that are involved in trafficking?

13. Please provide observations regarding government efforts to address the issue of unlawful child soldiering. Describe the government's efforts to disarm and demobilize child soldiers, to reintegrate former child soldiers, and to monitor the wellbeing of such children after reintegration.

14. Did the government make a coordinated, proactive effort to identify victims of all forms of trafficking? Did officials effectively coordinate among one another and with relevant nongovernmental organizations to refer victims to care? Is there any screening conducted before deportation to determine whether individuals were trafficked?

15. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, employment, training, etc.)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise?

16. What was the overall quality of victim care? How could victim services be improved? Was government funding for trafficking victim protection and assistance adequate?

17. Are services provided adequately to victims of both labor and sex trafficking? Men, women, and children? Citizens and noncitizens? LGBTI persons? Were such benefits linked to whether a victim assisted law

enforcement or participated in a trial, or whether a trafficker was convicted?

18. Do service providers and law enforcement work together cooperatively, for instance to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service providers and law enforcement?

19. Were there means by which victims could obtain restitution from the government or file civil suits against traffickers for restitution, and did this happen in practice?

20. How did the government encourage victims to assist in the investigation and prosecution of trafficking? How did the government protect victims during the trial process? If a victim was a material witness in a court case, was the victim permitted to obtain employment, move freely about the country, or leave the country pending trial proceedings? How did the government work to ensure victims were not re-traumatized during participation in trial proceedings? Can victims provide testimony via video or written statements? Were victims' identities kept confidential as part of such proceedings?

21. Did the government provide, through a formal policy or otherwise, temporary or permanent residency status, or other relief from deportation, for foreign victims of human trafficking who may face retribution or hardship in the countries wot which they would be deported? Were victims given the opportunity to seek legal employment while in this temporary or permanent residency? Were such benefits linked to whether a victim assisted law enforcement, participated in a trial or whether there was a successful prosecution? Does the government repatriate victims who wish to return home? Does the government assist with third country resettlement? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated or are they deported?

22. Does the government effectively assist its nationals exploited abroad? Does the government work to ensure victims receive adequate assistance and support for their repatriation while in destination countries? Does the government provide adequate assistance to repatriated victims after their return to their countries of origin, and if so, what forms of assistance?

23. Does the government inappropriately detain or imprison identified trafficking victims? Does the government punish, penalize, or detain trafficking victims for illegal activities directed by the trafficker, such as forgery of documents, illegal immigration, unauthorized employment, prostitution, theft, or drug production or transport?

24. What efforts has the government made to prevent human trafficking?

25. Has the government entered into effective bilateral, multilateral, or regional information-sharing and cooperation arrangements that have resulted in concrete and measureable outcomes?

26. Did the government provide assistance to other governments in combating trafficking in persons through trainings or other assistance programs?

27. Does the country have effective policies or laws regulating foreign labor recruiters? What efforts did the government make to punish labor recruiters or brokers involved in the recruitment of workers through knowingly fraudulent offers of employment and/or excessive fees for migration or job placement? What steps did the government take to minimize the trafficking risks faced by migrant workers departing from or arriving in the country?

28. What measures has the government taken to reduce the participation by nationals of the country in international and domestic child sex tourism? If any of the country's nationals are perpetrators of child sex tourism, do the country's child sexual abuse laws allow the prosecution of suspected sex tourists for crimes committed abroad?

29. What measures did the government take to establish the identity of local populations, including birth registration and issuance of documentation, citizenship, and nationality?

30. Did the government fund any anti-trafficking information, education, or awareness campaigns? Were these campaigns targeting potential trafficking victims and/or the demand for commercial sex or goods produced with forced labor? Does the government provide financial support to NGOs working to promote public awareness?

31. What efforts did the government make to ensure that its policies, regulations, and agreements relating to migration, labor, trade, and investment did not facilitate forced labor?

32. Please provide additional recommendations to improve the government's anti-trafficking efforts.

33. Please highlight effective strategies and practices that other governments could consider adopting.

Dated: December 7, 2016.

Carl B. Fox,

Acting Director, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State.

[FR Doc. 2016–29897 Filed 12–12–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Seventh RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary

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

ACTION: Twenty Seventh RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twenty Seventh RTCA SC–225 Rechargeable Lithium Batteries and Battery Systems Plenary.

DATES: The meeting will be held February 07, 2017 09:00 a.m.–05:00 p.m.

ADDRESS: The meeting will be held at: Virtually at *https://rtca.webex.com/rtca/j.php?MTID=mc6516c82ecf290e34b0f1e7cfaff2930,* Join by phone, 1–877–668–4493, Call-in toll-free number (US/Canada), 1–650–479–3208 Call-in toll number (US/Canada), Access code: 636 235 216, Meeting Password: bVxFZrm6.

FOR FURTHER INFORMATION, CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty Seventh RTCA SC–225 Plenary. The agenda will include the following:

Tuesday, February 7, 2017—9:00 a.m.–5:00 p.m.

1. Welcome and Administrative Remarks (including DFO & RTCA Statement)
2. Introductions
3. Agenda Review
4. Meeting-Minutes Review
5. Final Review and Comment (FRAC) Resolution Review
6. Approval of DO–311A for submission to RTCA PMC
7. Action Item Review

8. Any other Business
9. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 7, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–29760 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Sixth RTCA SC–214 Standards for Air Traffic Data Communications Services Plenary

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

ACTION: Twenty Sixth RTCA SC–214 Standards for Air Traffic Data Communications Services Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twenty Sixth RTCA SC–214 Standards for Air Traffic Data Communications Services Plenary.

DATES: The meeting will be held February 27, 2017—11:00 a.m.–12:00 p.m.

ADDRESS: The meeting will be held at: Virtually at *https://rtca.webex.com/rtca/j.php?MTID=m41a5c4b792b9ffbcee3f96c684dc6c2b,* Join by phone, 1–877–668–4493, Call-in toll-free number (US/Canada), Access code: 632 268 506, Meeting password: Sc214#26!.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty Sixth RTCA SC–214 Standards for Air Traffic Data Communications Services Plenary. The agenda will include the following:

Monday, February 27, 2017—11:00 a.m.–12:00 p.m.

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review
4. Meeting-Minutes Review
5. Terms of Reference (TOR) Revision Discussion
6. Approve TOR Revision
7. Any other Business
8. Date and Place of Next Meeting
9. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 7, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–29759 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Bowman Municipal Airport, BPP, Bowman, North Dakota.

SUMMARY: The FAA is considering a proposal to change 162.71 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at the former Bowman Municipal Airport, BPP, Bowman, ND. The aforementioned land is not needed for aeronautical use because the new Bowman Regional Airport, BWW, Bowman, ND is open and available for public aeronautical use.

The former Bowman Airport BPP site is located one mile west of the City of Bowman, ND and parallel to the north of U.S. Highway 12. The airport's prior aeronautical use was for general aviation and recreational flying. The proposed non-aeronautical use of the property will be converted to industrial use by the local economic development group.

DATES: Comments must be received on or before January 12, 2017.

ADDRESSES: Documents are available for review by appointment at the FAA Dakota-Minnesota Airports District Office, Mark J. Holzer, FAA Program Manager, 2301 University Drive-Bldg. 23B, Bismarck, ND 58504 Telephone: 701–323–7393/Fax: 701–323–7399 and Bowman County Airport Authority, P.O. Box 331, Bowman, ND 58623 Telephone Gary Brennan 701–523–3340.

Written comments on the Sponsor's request must be delivered or mailed to: Mark J. Holzer, FAA Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 2301 University Drive-Bldg. 23B, Bismarck, ND 58504 Telephone: 701–323–7393/Fax: 701–323–7399.

FOR FURTHER INFORMATION CONTACT: Laurie J. Suttmeier, Assistant Manager, Federal Aviation Administration, Dakota-Minnesota Airports Bismarck District Office, 2301 University Drive-Bldg. 23B, Bismarck, ND 58504 Telephone: 701–323–7380/Fax: 701–323–7399.

SUPPLEMENTARY INFORMATION: 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.

The former Bowman Airport Site was a general aviation and recreational airport located on the west side of the City of Bowman, ND. The land was acquired by the Bowman County Airport Authority with funding assistance from the FAA AIP and ADAP, ND State Aeronautics Commission and Bowman County tax revenues. The airport sponsor plans to sell the land back to Bowman County for industrial land use at the appraised Fair Market Value.

The disposition of proceeds from the sale 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 (64 FR 7696). Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

This notice announces that the FAA is considering the release of the subject airport property at the former Bowman Municipal Airport, BPP, Bowman, ND

from all federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Property Description

A tract of land located in Section 10, T131N, R102W, NE1/4 of Section 9, T131N, R102W, and the SE1/4 of Section 4, T131N, R102W of the 5th Principal Meridian, Bowman County, North Dakota, more particularly described as follows:

Beginning at a point on the West line of Section 10, T131N, R102W, a distance of 163.50 feet south of the NW corner of said section. Thence N 74°58′10″ W, a distance of 627.41 feet along the Southerly Right-of-Way line of the BNSF railroad to the North Section line of Section 9, T131N, R102W; thence continuing along said Right-of-Way line, a distance of 2,105.12 feet to the West line of the SE Quarter of Section 4; thence S 0°00′21″ W along the said West line, a distance of 548.58 feet; thence N 89°55′31″ E, a distance of 697.45 feet along the North line of said Section 9; thence S 54°56′42″ E, a distance of 2,373.23 feet along the South side of a tract described in document number 87877 to the West line of said Section 10; thence S 0°09′22″ E, a distance of 759.22 feet along the West line of said Section 10; thence S 89°58′09″ E, a distance of 544.00 feet along the North line of a tract described in document number 97571; thence S 0°05′30″ W, a distance of 511.00 feet along the East side of said document; thence S 89°53′05″ E, a distance of 118.90 feet along the North side of tract described in document number 127200; thence S 89°50′08″ E, a distance of 215.99 feet along the North side of a tract described in document number 82638; thence S 89°48′22″ E, a distance of 96.57 feet along the North side of a tract described in document number 115722; thence N 89°58′57″ E, a distance of 45.73 feet along the North side of a tract described in document number 115721; thence S 0°05′50″ E, a distance of 304.96 feet along the East side of said document to the Northerly Right-of-Way of U.S. Hwy 12; thence S 71°19′21″ E, a distance of 647.99 feet along said Highway Right-of-Way; thence N 0°12′16″ W, a distance of 511.21 feet along the West side of a tract described in document number 88616; thence S 89°54′17″ E, a distance of 295.26 feet along the North line of the SW Quarter of said section 10; thence S 1°22′57″ E, a distance of 160.93 feet along the East side of a tract described in document number 88616; thence S 86°43′07″ E along the North side of a tract described in document number 122157, a distance of 260.70 feet; thence S 54°54′35″ E along the Northeast side of a tract described in document number 137068, a distance of 547.96 feet; thence S 0°03′34″ E along the East side of said document, a distance of 372.30 feet to said Highway Right-of-Way; thence S 71°16′49″ E, a distance of 1,440.89 feet along said Highway Right-of-Way; thence N 8°30′03″ E, a distance of 436.22 feet along the West side of Anderson's First Addition; thence N 8°15′25″ E, a distance of 261.34 feet along the West side of Anderson's First Addition; thence N 54°53′39″ W, a distance of 1,479.76 feet along the Southwest side of a tract described in document number 103805; thence N 54°56′11″ W, a distance of 314.49 feet along the South side of Lot 11 of Wiffler's First Addition; thence N 54°58′24″ W, a distance of 1,635.30 feet along the South side of a tract described in document number 179431; thence N 0°32′32″ E, a distance of 555.00 feet along the South side of said document; thence S 50°03′56″ W, a distance of 473.70 feet along the South side of said document; thence N 54°58′24″ W, a distance of 1154.80 feet along the South side of said document to the West Section line of said Section 10; thence N 0°03′06″ W, a distance of 227.10 feet along the West line of said Section 10 to the point of beginning.

Said tract contains 160.8 acres, more or less.

And a tract of land located in the Southeast Quarter of Section 4, T131N, R102W of the 5th P.M., more particularly described as follows: Beginning at the SE corner of said Section 4, thence N 00°05′21″ W, a distance of 43.06 feet to a point on the north right of way line of the South Dakota Railroad Authority (aka BNSF Railway); thence N 75°00′21″ W, a distance of 1310.55 feet along the north right of way line of said railroad to the True Point of Beginning; thence N 75°00′21″ W, a distance of 707.50 feet along the north right of way line of said railroad: thence N 35°05′00″ E, a distance of 342.68 feet; thence S 46°23′09″ E, a distance of 671.89 feet to the True Point of Beginning, excepting a tract of land described as follows: Beginning at a point 1,856.5 feet west of and 701.9 feet north of the SE corner of said Section 4; thence S 49°13′ E, a distance of 350.0 feet more or less to the north right of way line of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Co. (aka BNSF Railway) as the same is platted and constructed across said Section 4; thence on a bearing of N 74°54′ W along the north right of way line of said railroad, a distance of 370.6 feet; thence N 35°05′ E, a distance of 161.0 feet to the point of beginning, less Railroad Right of Way.

Said tract contains 1.91 acres, more or less.

The total BPP land described above equals 162.71 acres, more or less.

Issued in Minneapolis, MN, on November 30, 2016.

Andy Peek,

Manager, Dakota-Minnesota Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2016–29773 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2016–9477]

Airport Privatization Pilot Program: Preliminary Application for Westchester County Airport, White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of receipt and acceptance for review.

SUMMARY: The FAA has completed its review of the Westchester County Airport (HPN) preliminary application for participation in the Airport Privatization Pilot Program. The preliminary application is accepted for review, with a filing date of November 4, 2016. The County of Westchester, the airport sponsor, may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption under the pilot program.

DATES: Comments must be received February 13, 2017.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Director, Airport Compliance and Management Analysis, ACO–1, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085

SUPPLEMENTARY INFORMATION:

Background

Title 49 U.S.C. 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice in the **Federal Register** after

review of a preliminary application. The FAA must publish a notice of receipt of the final application in the **Federal Register** for public review and comment for a sixty-day period. The HPN preliminary application is available for public review at *http://www.regulations.gov.* The docket number is FAA Docket NO. 2016–9477.

Title 49 U.S.C 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public-use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale or lease of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the FAA issued a Notice of procedures to be used in applications for exemption under the Airport Privatization Pilot Program (62 FR 48693). A request for participation in the pilot program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

The County of Westchester submitted a preliminary application to the FAA for Westchester County Airport on November 4, 2016; the preliminary application is accepted for review, with a filing date of November 4, 2016. The County may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption.

If the FAA accepts the final application for review, the application will be made available for public review and comment for a 60-day period.

Issued in Washington, DC, on December 6, 2016.

Kevin C. Willis,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2016–29772 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–120]

Petition for Exemption; Summary of Petition Received; Drone Seed, Co.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 3, 2017.

ADDRESSES: You may send comments identified by Docket Number FAA–2016–9247 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Christopher Morris, (202) 267–4418, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 6, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9247
Petitioner: Drone Seed, Co.
Section of 14 CFR Affected: 107.36; 137.19(c), (d), (e)(2)(ii), (iii), and (v); 137.31(a) and (b); 137.33(a) and (b); 49 CFR 175.9

Description of Relief Sought: Drone Seed, Co., (''DRONESEED'') an operator of Small Unmanned Aircraft Systems (sUAS) seeks an exemption to operate UAS for commercial agricultural related services. The custom UAS is capable of providing a wide array of essential agricultural spraying services, including: Watering, fertilizers, pesticides, and herbicides. Initial customers will be timber companies in Oregon and Washington, the sites are extremely remote and often several thousand acres controlled by the customer timber company.

[FR Doc. 2016–29780 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic iron and steel components of trunnion bearings for emergency repair of Willow Avenue Lift Bridge in Cleveland, Ohio.

DATES: The effective date of the waiver is December 14, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *Gerald.Yakowenko@dot.gov.* For legal

questions, please contact Mr. William Winne, FHWA Office of the Chief Counsel, (202) 366–1397, or via email at *William.Winne@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Publishing Office's database at: *https://www.gpo.gov/fdsys/.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic iron and steel components of trunnion bearings for emergency repair of Willow Avenue Lift Bridge in Cleveland, Ohio.

In accordance with the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) and the Continuing Appropriations Act, 2017 (Pub. L. 114–223), FHWA published a notice of intent to issue a waiver on its Web site: *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=138* on October 13th. The FHWA received no comments in response to the publication. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of trunnion bearings for emergency repair of Willow Avenue Lift Bridge in the State of Ohio.

The Ohio State DOT, contractors, and subcontractors involved in the procurement of bearing units, are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410

Dated: December 5, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–29820 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0207]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 18 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted November 11, 2016. The exemptions expire on November 11, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. 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., e.t., 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 October 11, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 70248). That notice listed 18 applicants' case histories. The 18 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for 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 statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 18 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive

safely. The 18 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, complete loss of vision, exotropia, hypoexotropia, macular scar, optic atrophy, retinal detachment, and retinal scar. In most cases, their eye conditions were not recently developed. Sixteen of the applicants were either born with their vision impairments or have had them since childhood.

The 2 individuals that sustained their vision conditions as adults have had it for a range of 22 to 32 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 18 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 45 years. In the past three years, 1 driver was involved in a crash, and 1 driver was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 11, 2016 notice (81 FR 70248).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 18 applicants, 1 driver was involved in a crash and 1 driver was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 18 applicants listed in the notice of October 11, 2016 (81 FR 70248).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the

exemption, therefore, FMCSA will impose requirements on the 18 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) 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 (3) 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 have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received 1 comment in this proceeding. Joshua H. stated that Tracy L. Neal holds a license in Mississippi and not Michigan.

IV. Conclusion

Based upon its evaluation of the 18 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b):

Joshua A. Akshar (NY)
Elijah A. Allen, Jr. (AR)
Tanner H. Brooks (MS)
Brian E. Broux (CA)
Alvin J. Dannenmann (DE)
Wayne L. Dorbert (PA)
Roger D. Ellsworth Jr. (NC)
Gregory L. Frisch (CA)
Josh Gallant Jr. (SC)
John P. Grum (PA)
Dillon L. Hendren (SC)
Roger E. Kadolph (IA)
Jay D. May (CO)
Tracy L. Neal (MS)
Edward P. Paloskey Jr. (PA)
Jesse R. Parker (LA)
Christopher A. Stewart (GA)
Emejildo Vargas (MA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 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: December 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–29824 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–11426; FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2005–23099; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2011–0325; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 91 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: http://

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., e.t., 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On April 7, 2016, FMCSA published a notice announcing its decision to renew exemptions for 91 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (81 FR 20433). The public comment period ended on May 9, 2016 and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV if that person:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 91 renewal exemption applications and that there were no comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in 49 CFR 391.41 (b)(10), subject to the requirements cited above:

As of March 2, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 27 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (70 FR 71884; 71 FR 4632; 73 FR 5259; 74 FR 43217; 74 FR 57551; 74 FR 65842; 75 FR 1451; 75 FR 9482; 76 FR 37169; 76 FR 50318; 76 FR 53710; 76 FR 75942; 76 FR 75943; v77 FR 539; 77 FR 545; 77 FR 10604; 77 FR 10608; 77 FR 10604; 78 FR 63302; 78 FR 64271; 78 FR 64274; 79 FR 10619):

John P. Bails (IA)
Donald J. Bierwirth, Jr. (CT)
Lester E. Burns (NM)
Cris D. Bush (TN)
Bruce A. Cameron (ND)
Billy C. Chenault (NM)
Eugene Contreras (NM)
Jim L. Davis (NM)
Eric DeFrancesco (PA)
David E. Evans (NC)
Jason L. Hoovan (UT)
Amos W. Hulsey (AL)
Brandon C. Koopman (NE)
Curtis M. Lawless (VA)
Norman V. Myers (WA)
Millard F. Neace II (WV)
William E. Norris (NC)
Paul D. Prillaman (VA)
Richard E. Purvenas, Jr. (DE)
Scott Randol (MO)
Mark C. Reineke (NM)
Miguel A. Sanchez (NM)
Tigran Semerjyan (CA)
Lawrence D. Ventimiglia (NV)
James Vickery (KY)
Norman J. Watson (NC)
Reginald J. Wuethrich (IL)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–2005–22727; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2011–0325; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170. Their exemptions are effective as of March 2, 2016 and will expire on March 2, 2018.

As of March 5, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (68 FR 74699; 69 FR 10503; 70 FR 57353; 70 FR 72689; 71 FR 6829; 72 FR 39879; 72 FR 52419; 72 FR 62897; 73 FR 8392; 74 FR 64124; 75 FR 8184; 77 FR 7233; 79 FR 10602):

Lee A. Burke (WI)
Barton C. Caldara (WI)
Allan Darley (UT)
Richard Hailey, Jr. (DC)
Robert V. Hodges (IL)
John R. Knott, III (MD)
Timothy S. Miller (AZ)
Edward D. Pickle (GA)
Robert L. Thies (IN)
James T. Wortham, Jr. (GA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2007–27897. Their exemptions are effective as of March 5, 2016 and will expire on March 5, 2018.

As of March 7, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 6 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 3552; 77 FR 13691; 79 FR 12565):

Richard P. Frederiksen (WY)
Samuel V. Holder (IL)
Dennis J. Lessard (IN)
Jerry L. Pettijohn (OK)
Jake F. Richter (KS)
Robert J. Townsley (VA)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0365. Their exemptions are effective as of March 7, 2016 and will expire on March 7, 2018.

As of March 13, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 20 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 1908; 79 FR 14333):

Jeffrey A. Benoit (VA)
Norvan D. Brown (IA)
Jackie K. Curlin (KY)
Justin W. Demarchi (OH)
Gary A. Goostree (OH)
Jimmey C. Harris (TX)
David G. Henry (TX)
Rogelio C. Hernandez (CA)
Michael J. Hoskins (KS)
Zion Irizarry (NV)
Mohamed H. Issak (KS)
Juan J. Luna (CA)
Robert Mollicone (FL)
Christopher D. Moore (NC)
Elmore Nicholson, Jr. (AL)
James C. Paschal, Jr. (GA)
Harold D. Pressley (TX)
Jason C. Sadler (KY)
Robert Schick (PA)
Michael O. Thomas (NC)

The drivers were included in one of the following dockets: Docket No. FMCSA–2013–0174. Their exemptions are effective as of March 13, 2016 and will expire on March 13, 2018.

As of March 15, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 11 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (67 FR 68719; 68 FR 2629; 70 FR 7545; 71 FR 4194; 71 FR 13450; 72 FR 39879; 72 FR 40362; 72 FR 52419; 73 FR 9158; 74 FR 43217; 74 FR 57551; 74 FR 64124; 74 FR 65842; 75 FR 1451):

Gene Bartlett, Jr. (VT)
Ronald D. Boeve (MI)
Daniel M. Cannon (OR)
Wayne H. Holt (UT)
Billy R. Jeffries (WV)
Guy A. Lanham (FL)
Oscar N. Lefferts (AL)
Willie L. Parks (CA)
Bradley S. Sanders (NM)
Gary N. Wilson (UT)
William B. Wilson (KY)

The drivers were included in one of the following dockets: Docket No. FMCSA–2002–12844; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0365. Their exemptions are effective as of March 15, 2016 and will expire on March 15, 2018.

As of March 23, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 6 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 5874; 77 FR 17117; 79 FR 13085):

Paul R. Barron (MO)
Eugenio V. Bermudez (MA)
Johnny Dillard (SC)
Edward M. Jurek (NY)
Glenn R. Theis (MN)
Peter A. Troyan (MI)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0366. Their exemptions are effective as of March 23, 2016 and will expire on March 23, 2018.

As of March 31, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 11 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (68 FR 74699; 69 FR 10503; 71 FR 6829; 73 FR 6242; 73 FR 8392; 73 FR 16950; 75 FR 8184; 75 FR 9477; 77 FR 7723; 77 FR 13689; 79 FR 14331):

Alberto Blanco (NC)
Charles W. Cox (AR)
Gary W. Ellis (NC)
Robin S. England (GA)
W. R. Goold (AZ)
K. L. Guse (OH)
Steven W. Halsey (MO)
John C. Henricks (OH)
Thomas M. Leadbitter (PA)
Jonathan P. Lovel (IL)
Kent S. Reining (IL)

The drivers were included in one of the following dockets: Docket No. FMCSA–2003–16564; FMCSA–2007–0071. Their exemptions are effective as of March 31, 2016 and will expire on March 31, 2018.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: December 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–29826 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–6156; FMCSA–2001–9561; FMCSA–2001–11426; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0021; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2010–0050; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2011–0324; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0106; FMCSA–2012–0159; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0008]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 100 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before January 12, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–6156; FMCSA–2001–9561; FMCSA–2001–11426; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0021; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2010–0050; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2011–0324; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0106; FMCSA–2012–0159; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0008 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://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., e.t., 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 online.

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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV if that person:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 100 individuals listed in this notice have requested renewal of their exemptions from the vision standard in 49 CFR 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent

with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 100 applicants has satisfied the renewal conditions for obtaining an exemption from the vision requirement (63 FR 66227; 64 FR 16520; 64 FR 27027; 64 FR 51568; 64 FR 54948; 65 FR 159; 66 FR 30502; 66 FR 41654; 66 FR 66969; 67 FR 10471; 67 FR 10475; 67 FR 17102; 67 FR 19798; 68 FR 44837; 68 FR 69432; 69 FR 8260; 69 FR 17267; 69 FR 19611; 70 FR 41811; 71 FR 644; 71 FR 6824; 71 FR 14566; 71 FR 14567; 71 FR 14568; 71 FR 19604; 71 FR 26601; 71 FR 30227; 71 FR 30228; 71 FR 32183; 71 FR 41310; 72 FR 52423; 73 FR 15254; 73 FR 15567; 73 FR 27014; 73 FR 27015; 73 FR 28187; 73 FR 35195; 73 FR 35196; 73 FR 35197; 73 FR 35198; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 36955; 73 FR 38497; 73 FR 38498; 73 FR 38499; 73 FR 42403; 73 FR 48273; 73 FR 48275; 74 FR 37299; 74 FR 43220; 74 FR 48344; 74 FR 57553; 74 FR 65842; 75 FR 9482; 75 FR 14656; 75 FR 19674; 75 FR 20881; 75 FR 25918; 75 FR 25919; 75 FR 27622; 75 FR 28682; 75 FR 34210; 75 FR 34211; 75 FR 34212; 75 FR 36778; 75 FR 36779; 75 FR 38602; 75 FR 39729; 75 FR 44051; 77 FR 7657; 77 10604; 77 FR 15184; 77 FR 17115; 77 FR 22059; 77 FR 23797; 77 FR 26816; 77 FR 27847; 77 FR 27850; 77 FR 29447; 77 FR 36336; 77 FR 36338; 77 FR 38381; 77 FR 38384; 77 FR 38386; 77 FR 40945; 77 FR 40946; 77 FR 41879; 77 FR 44708; 77 FR 44946; 77 FR 46153; 77 FR 46795; 77 FR 51846; 77 FR 52391; 79 FR 10606; 79 FR 10619; 79 FR 14571; 79 FR 17641; 79 FR 18390; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 28588; 79 FR 29495; 79 FR 35212; 79 FR 35218; 79 FR 35220; 79 FR 37842; 79 FR 37843; 79 FR 38659; 79 FR 38661; 79 FR 40945; 79 FR 41735; 79 FR 41737; 79 FR 41740; 79 FR 46153; 79 FR 47175; 79 FR 53514; 79 FR 56102). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of August and are discussed below:

As of August 1, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 21 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 54948; 65 FR 159; 66 FR 41654; 66 FR 66969; 67 FR 10471; 67 FR 10475; 67 FR 17102; 67 FR 19798; 68 FR 44837; 68 FR 69432; 69 FR 8260; 69 FR 17267; 69 FR 19611; 70 FR 41811; 71 FR 644; 71 FR 6824; 71 FR 14568; 71 FR 19604; 71 FR 26601; 71 FR 30228; 71 FR 32183; 71 FR 41310; 72 FR 52423; 73 FR 15254; 73 FR 15567; 73 FR 27014; 73 FR 27015; 73 FR 36955; 73 FR 42403; 74 FR 43220; 74 FR 57553; 74 FR 65842; 75 FR 9482; 75 FR 14656; 75 FR 19674; 75 FR 20881; 75 FR 25918; 75 FR 27622; 75 FR 28682; 75 FR 36778; 75 FR 36779; 75 FR 38602; 75 FR 39729; 77 FR 7657; 77 10604; 77 FR 15184; 77 FR 17115; 77 FR 22059; 77 FR 23797; 77 FR 26816; 77 FR 27847; 77 FR 27850; 77 FR 29447; 77 FR 36338; 77 FR 38384; 77 FR 38386; 77 FR 44946; 79 FR 10606; 79 FR 10619; 79 FR 14571; 79 FR 17641; 79 FR 18390; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 28588; 79 FR 29495; 79 FR 35212; 79 FR 35218; 79 FR 35220; 79 FR 37842; 79 FR 37843; 79 FR 47175):

Lloyd J. Botsford (MO)
Brad T. Braegger (UT)
Ronald D. Danberry (MN)
Frank J. Faria (CA)
Juneau Faulkner (GA)
Curtis N. Fulbright (NC)
Randy M. Garcia (NM)
Dean D. Hawks (WI)
Larry L. Jarvis (VA)
Julian A. Mancha (TX)
Randall L. Mathis (AL)
Larry G. Nikkel (WA)
Michael J. Rankin (OH)
Justin T. Richman (IN)
Kevin L. Routin (KY)
Andrew W. Schollett (CO)
Michael D. Singleton (IN)
Roberto E. Soto (TX)
Gary R. Thomas (OH)
Barney J. Wade (MS)
Wade W. Ward (WY)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–1999–6156; FMCSA–2001–9561; FMCSA–2001–11426; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0021; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2010–0050; FMCSA–2010–0082; FMCSA–2011–0324; FCMSA–2011–0379; FMCSA–2012–0104; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0006. Their exemptions are effective as of August 1, 2016 and will expire on August 1, 2018.

As of August 6, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 8 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 27027; 64 FR 51568; 71 FR 14566; 71 FR 30227; 73 FR 27014; 75 FR 25918; 75 FR 38602; 75 FR 39729; 77 FR 15184; 77 FR 27850; 77 FR 33017; 77 FR 36336; 77 FR 36338; 77 FR 40946; 77 FR 44708; 77 FR 46795; 79 FR 38661):

William L. Martin (OR)
Richard L. Miller (IN)
Gerardus C. Molenaar (PA)
James R. Morgan (MI)
Lance C. Phares (NY)
Willard L. Riggle (IN)
Richard D. Tucker II (NC)
Jay Turner (OH)

The drivers were included in one of the following dockets: Docket No. FMCSA–1999–5578; FMCSA–2006–24015; FMCSA–2010–0082; FMCSA–2011–0379; FMCSA–2012–0106; FMCSA–2012–0159. Their exemptions are effective as of August 6, 2016 and will expire on August 6, 2018.

As of August 8, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 25 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 38659; 79 FR 53514):

Jimmy A. Baker (TX)
Frank B. Belenchia (TN)
Ricky W. Bettes (TX)
Antonio A. Calixto (MN)
James W. Carter, Jr. (KS)
Ronald G. Daniels (MO)
Larry G. Davis (TN)
Michael C. Doheny (CT)
George P. Ford (NC)
Todd M. Harguth (MN)
Dennis W. Helgeson (MN)
Ronnie L. Henry (KS)
Johnny L. Irving (MS)
Kevin L. Jones (SC)
Keith A. Kelley (ME)
David L. Miller (OH)
Earl L. Mokma (MI)
Donald L. Nisbet (WA)
David Perkins (NY)
Harry W. Root (MN)
Paul W. Sorenson (UT)
Randall H. Tempel (MT)
Cory J. Tivnan (WA)
Ricky W. Witt (IA)

John D. Woods (MI)

The drivers were included on the following docket: Docket No. FMCSA–2014–0007. Their exemptions are effective as of August 8, 2016 and will expire on August 8, 2018.

As of August 9, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 8 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (75 FR 34210; 75 FR 34211; 75 FR 34212; 75 FR 47888; 77 FR 40945; 79 FR 40945):

Mark S. Berkheimer (PA)
Rici W. Giesseman (OH)
Michael A. Jabro (MI)
Michael M. Martinez (NM)
Buddy W. Myrick (TX)
Alan J. Reynaldos (NJ)
Charles L. Rill, Sr. (MD)
Roger Sulfridge (KY)

The drivers were included on the following docket: Docket No. FMCSA–2010–0114. Their exemptions are effective as of August 9, 2016 and will expire on August 9, 2018.

As of August 18, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 32 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (63 FR 66227; 64 FR 16520; 71 FR 14567; 71 FR 30228; 73 FR 28187; 73 FR 35195; 73 FR 35196; 73 FR 35197; 73 FR 35198; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 38497; 38498; 73 FR 38499; 73 FR 48273; 73 FR 48275; 74 FR 37299; 74 FR 48344; 75 FR 25919; 75 FR 39729; 75 FR 44051; 77 FR 40946; 77 FR 46153; 79 FR 46153):

Catarino Aispuro (OR)
Gary R. Andersen (NE)
Donald L. Carman (OH)
Christopher R. Cone (GA)
Walter O. Connelly (WA)
Armando P. D'Angeli (PA)
Henry L. Donvian (WV)
Roger D. Elders (MI)
James F. Epperson (IN)
Lucious J. Erwin (TX)
Riche Ford (CO)
Kevin K. Friedel (NY)
Steven G. Harter (OR)
George F. Hernandez, Jr. (AZ)
Andrew C. Kelly (WV)
Jason W. King (MT)
Billy J. Lewis (LA)
Robert W. McMillian (MA)
Richard A. Peterson (OR)
Chad M. Quarles (AL)
Carroll G. Quisenberry (KY)
Ryan J. Reimann (WI)
Jacob H. Riggle (OK)
Brandon J. See (IA)
Ricky L. Shepler (PA)
LeTroy D. Sims (SC)
John L. Stone (PA)
Nils S. Thornberg (OR)
Daniel W. Toppings (WV)
Christopher R. Whitson (NC)
Charles A. Winchell (OK)
Aaron E. Wright (MI)

The drivers were included on the following docket: Docket No. FMCSA–1999–4334; FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2009–0154; FMCSA–2010–0082. Their exemptions are effective as of August 18, 2016 and will expire on August 18, 2018.

As of August 19, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 2 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 41737; 79 FR 56102):

Leamon V. Manchester (LA)
Leverne F. Schilte, Jr. (OH)

The drivers were included on the following docket: Docket No. FMCSA–2014–0008. Their exemptions are effective as of August 19, 2016 and will expire on August 19, 2018.

As of August 27, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 2 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 38381; 77 FR 51846; 79 FR 41740):

Tyrane Harper (AL)
Gregory S. Smith (AR)

The drivers were included on the following docket: Docket No. FMCSA–2012–0160. Their exemptions are effective as of August 27, 2016 and will expire on August 27, 2018.

As of August 29, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 2 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 41879; 77 FR 52391; 79 FR 41735):

Ricky W. Goins (TN)
Clayton Schroeder (MN)

The drivers were included on the following docket: Docket No. FMCSA–2012–0161. Their exemptions are effective as of August 29, 2016 and will expire on August 29, 2018.

Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified Medical Examiner, as defined by 49 CFR 390.5, who attests that the driver is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

IV. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 100 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: December 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–29833 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2007–0071; FMCSA–2007–28695; FMCSA–2008–0231; FMCSA–2009–0011; FMCSA–2009–0086; FMCSA–2009–0154; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0299; FMCSA–2011–0324; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2011–0378; FMCSA–2013–0170; FMCSA–2014–0002]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 87 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. 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., e.t., 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On April 7, 2016, FMCSA published a notice announcing its decision to renew exemptions for 87 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (81 FR 20435). The public comment period ended on May 9, 2016, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV if that person:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 87 renewal exemption applications and that no comments were received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in 49 CFR 391.41 (b)(10), subject to the requirements cited above:

As of April 12, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (68 FR 61857; 68 FR 75715; 71 FR 644; 72 FR 46261; 72 FR 54972; 73 FR 8392; 73 FR 46973; 73 FR 54888; 74 FR 19267; 74 FR 28094; 74 FR 37295; 74 FR 57553; 74 FR 60021; 75 FR 8184; 76 FR 8809; 76 FR 44652; 76 FR 70210; 76 FR 70212; 76 FR 73769; 77 FR 3547; 77 FR 5874; 77 FR 7233; 77 FR 7657; 77 FR 17117; 77 FR 17119; 77 FR 22059; 77 FR 22061; 78 FR 66099; 78 FR 67455; 79 FR 2248; 79 FR 4805; 79 FR 13085; 79 FR 14328; 79 FR 14332; 79 FR 18390):

Brian F. Denning (CA)
James Esposito, Jr. (PA)
Keith J. Haaf (VA)
Lowell Johnson (MN)
Chet A. Keen (UT)
Allen J. Kunze (ND)
Craig R. Martin (TX)
Daniel I. Miller (PA)
Jason E. Mallette (MS)
John W. Myre (SD)
Ezequiel M. Ramirez (TX)
Mark A. Smalls (GA)
Greg W. Story (NC)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–2003–16241; FMCSA–2007–28695; FMCSA–2008–0231; FMCSA–2009–0086; FMCSA–2009–0154; FMCSA–2011–0299; FMCSA–2011–0324; FMCSA–2011–0366; FMCSA–2013–0170. Their exemptions are effective as of April 12, 2016 and will expire on April 12, 2018.

As of April 14, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 19 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 40404; 64 FR 54948; 64 FR 66962; 64 FR 68195; 65 FR 159; 65 FR 20251; 66 FR 66969; 67 FR 10475; 67 FR 17102; 68 FR 61860; 68 FR 69432; 68 FR 74699; 68 FR 75715; 69 FR 10503; 69 FR 17267; 69 FR 8260; 70 FR 57353; 70 FR 72689; 71 FR 4194; 71 FR 5105; 71 FR 6824; 71 FR 6825; 71 FR 6826; 71 FR 13450; 71 FR 16410; 71 FR 19600; 71 FR 19602; 73 FR 8392; 73 FR 11989; 74 FR 60022; 75 FR 1835; 75 FR 4623; 75 FR 9482; 75 FR 13653; 77 FR 17107; 79 FR 18391):

Bradley T. Alspach (IL)
Scott E. Ames (ME)
Nick D. Bacon (KY)
Mark A. Baisden (OH)
Johnny W. Bradford, Sr. (KY)
Levi A. Brown (MT)
Charlie F. Cook (GA)
Curtis J. Crowston (ND)
Rupert G. Gilmore III (AL)
Albert L. Gschwind (WI)
Walter R. Hardiman (WV)
Michael W. Jones (IL)
Matthew J. Konecki (MT)
Jack D. Miller (OH)
Eric M. Moats, Sr. (MD)
Robert W. Nicks (NY)
Joseph S. Nix, IV (MO)

Robert V. Sloan (NC)
Steven L. Valley (ME)

The drivers were included in one of the following dockets: Docket No. FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2009–0321. Their exemptions are effective as of April 14, 2016 and will expire on April 14, 2018.

As of April 16, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, Glen A. Schroeder (SD), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 10611; 79 FR 22003).

This driver was included in the following docket: Docket No. FMCSA–2014–0002. The exemption is effective as of April 16, 2016 and will expire on April 16, 2018.

As of April 17, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 19749; 77 FR 22838; 79 FR 15794):

Robert J. Abbas (MN)
Paul T. Browning (MT)
Kevan J. Larson (ID)
Gilbert M. Rosas (AZ)
Kim A. Shaffer (PA)
Larry W. Slinker (VA)
Lonnie J. Supanchick (NV)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0378. Their exemptions are effective as of April 17, 2016 and will expire on April 17, 2018.

As of April 18, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 27 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 10606; 79 FR 10607; 79 FR 10608; 79 FR 10609; 79 FR 10610; 79 FR 10611; 79 FR 22003):

John M. Alfano (MI)
Felipe Bayron (WI)
Thomas Benavidez, Jr. (ID)
Gary A. Budde (IL)
Mark Castleman (MN)
Lorimer Christianson (IA)
David L. Dykes (FL)
Daniel Fedder (IL)
Edward A. Flitton (UT)
Juan Gallo-Gomez (CT)
Andeberhan O. Gidey (WA)
Luis Gomez-Banda (NV)
Christopher Goodwin (NC)
David Knobloch (MI)
Gregory L. Kockelman (MN)
Mark La Fleur (MD)
Jerry P. Lindesmith (OK)
Dennis A. Lindner (MN)
John Murray (WA)
Michael Nichols (GA)
Dino J. Pires (CT)
Anthony S. Poindexter (MD)
Phil N. Schad (MO)
Glen A. Schroeder (OR)
John B. Theres (IL)
Robert S. Waltz (ME)
Willard H. Weerts (IL)

The drivers were included on the following docket: Docket No. FMCSA–2014–0002. Their exemptions are effective as of April 18, 2016 and will expire on April 18, 2018.

As of April 23, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 11 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (67 FR 10471; 67 FR 19798; 68 FR 61857; 68 FR 74699; 68 FR 75715; 69 FR 19611; 71 FR 6825; 71 FR 6829; 71 FR 19604; 72 FR 46261; 72 FR 54972; 72 FR 71993; 73 FR 15254; 73 FR 16950; 74 FR 57553; 74 FR 65842; 75 FR 1835; 75 FR 9478; 75 FR 9482; 75 FR 20881; 77 FR 7657; 77 FR 10604; 77 FR 13689; 77 FR 17115; 77 FR 22059):

Lyle H. Banser (WI)
Cary Carn (NJ)
Charley J. Davis (OK)
Derek T. Ford (MD)
Thomas R. Hedden (IL)
Earl R. Mark (IL)
Richard K. Mell (VA)
Douglas A. Mendoza (MD)
Russell L. Moyers, Sr. (WV)
Danny Rolfe (ME)
Donald Schaeffer (MO)

The drivers were included in one of the following dockets: Docket No. FMCSA–2001–11426; FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2007–0071; FMCSA–2007–28695; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0324. Their exemptions are effective as of April 23, 2016 and will expire on April 23, 2018.

As of April 27, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (75 FR 9480; 75 FR 22176; 77 FR 3552; 77 FR 13691; 77 FR 17108; 79 FR 17642; 79 FR 17643):

Chad L. Burnham (ME)
Loren D. Chapman (MN)
David A. Christenson (NV)
John T. Edmondson (AL)
Paul K. Leger (NH)
Martin L. Reyes (IL)
Gerald L. Rush, Jr. (NJ)
Alan T. Watterson (MA)
Larry W. Winkler (MO)

The drivers were included in one of the following dockets: Docket No. FMCSA–2009–0011; FMCSA–2011–0365. Their exemptions are effective as of April 27, 2016 and will expire on April 27, 2018.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: December 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–29832 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0380]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 43 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 12, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0380 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington,

DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://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., e.t., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for 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 statute also allows the Agency to renew exemptions at the end of the 2-year period. The 43 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Tony E. Allen

Mr. Allen, 57, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Allen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Allen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Habib Awol

Mr. Awol, 46, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Awol understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Awol meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maryland.

Michael J. Beatty

Mr. Beatty, 57, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beatty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beatty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Troy J. Bolduc

Mr. Bolduc, 23, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bolduc understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bolduc meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

James W. Britt

Mr. Britt, 57, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Britt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Britt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Gilberto A. Cortez

Mr. Cortez, 65, has had ITDM since 2008. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in

the last 5 years. His endocrinologist certifies that Mr. Cortez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cortez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Lawrence Davidson

Mr. Davidson, 68, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davidson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davidson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New Mexico.

Julio Duval-Medina

Mr. Duval-Medina, 66, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duval-Medina understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duval-Medina meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Darlene R. Errichetto

Ms. Errichetto, 53, has had ITDM since 2011. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Errichetto understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Errichetto meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class B CDL from Massachusetts.

Michael D. Ezell

Mr. Ezell, 31, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ezell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ezell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Georgia.

Thomas E. Fey

Mr. Fey, 50, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Arthur Freeman, Jr.

Mr. Freeman, 66, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Freeman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freeman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Gregory L. Grieves

Mr. Grieves, 34, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Grieves understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grieves meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Gregory S. Gustafson

Mr. Gustafson, 48, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gustafson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gustafson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Tennessee.

Becky S. Hanley

Ms. Hanley, 41, has had ITDM since 2012. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Hanley understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Hanley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds an operator's license from Nebraska.

Frederick M. Harris

Mr. Harris, 46, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Harris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Brian W. Hinzman

Mr. Hinzman, 47, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hinzman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hinzman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Dakota.

Emory S. Hudson, Jr.

Mr. Hudson, 47, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hudson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hudson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Paul E. Iacobacci

Mr. Iacobacci, 57, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Iacobacci understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Iacobacci meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

David A. Kutcher

Mr. Kutcher, 60, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kutcher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kutcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Tony M. Lawrence

Mr. Lawrence, 51, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lawrence understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lawrence meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Ronald E. Lockridge

Mr. Lockridge, 49, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lockridge understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lockridge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Eileen E. Manning

Ms. Manning, 65, has had ITDM since 2015. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Manning understands diabetes management and monitoring has stable

control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Manning meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Wisconsin.

Warren G. Marlow, Jr.

Mr. Marlow, 58, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marlow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marlow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Edward S. Marshall

Mr. Marshall, 51, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marshall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marshall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maine.

Arthur D. McFadden, Sr.

Mr. McFadden, 72, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McFadden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McFadden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Jeffrey S. Moyer

Mr. Moyer, 60, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moyer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Joseph M. Mraw

Mr. Mraw, 60, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mraw understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mraw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Richard K. E. Nelson

Mr. Nelson, 23, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nelson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nelson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Charles W. Norris

Mr. Norris, 65, has had ITDM since 1998. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Norris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Norris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Kevin W. Pochopin

Mr. Pochopin, 27, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pochopin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pochopin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Antonia S. Romao

Mr. Romao, 51, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Romao understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Romao meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Paul Ross, Jr.

Mr. Ross, 54, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ross understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ross meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Georgia.

Matthew G. Russo, Jr.

Mr. Russo, 59, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Russo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Cole J. Schoenneman

Mr. Schoenneman, 23, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schoenneman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schoenneman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Charles W. Scott, Jr.

Mr. Scott, 53, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Scott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Mickey J. Self

Mr. Self, 41, has had ITDM since 1986. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Self understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Self meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Jeffrey E. Sobczak

Mr. Sobczak, 54, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sobczak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sobczak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Michael D. Strickland

Mr. Strickland, 58, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Strickland understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Strickland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Vince D. Venezia

Mr. Venezia, 40, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Venezia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Venezia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Jared M. Wabeke

Mr. Wabeke, 30, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wabeke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wabeke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

Marcus D. Wade

Mr. Wade, 22, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wade understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wade meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Tanner R. Walsh

Mr. Walsh, 22, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walsh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walsh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

IV. 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–2016–0380 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. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0380 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: December 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–29825 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2016–0126]

Waiver Request for Aquaculture Support Operations for the 2017 Calendar Year: M/V COLBY PERCE and M/V RONJA CARRIER

AGENCY: Maritime Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: Pursuant to a delegation of authority from the Secretary of Transportation, the Maritime Administrator is authorized to issue waivers allowing documented vessels with only registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. A request for such a waiver has been received by the Maritime Administration (MARAD). This notice is being published to solicit comments intended to assist MARAD in determining whether a suitable vessel of the United States is available that could perform the required services. If no suitable U.S.-flag vessel is available, the Maritime Administrator may issue a waiver necessary to comply with USCG Aquaculture Support regulations. A brief description of the proposed aquaculture support service is listed in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before January 12, 2017.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2016–0126 by any of the following methods:

- *On-line via the Federal Electronic Portal: http://www.regulations.gov.* Search using ''MARAD–2016–0126'' and follow the instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Reference Materials and Docket Information: You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via *http://www.regulations.gov.* Search using ''MARAD–2016–0126.'' All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.* If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: As a result of the enactment of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 12102, the Secretary of Transportation has the discretionary authority to issue waivers allowing documented vessels with registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. The Secretary has delegated this authority to the Maritime Administrator. Pursuant to this authority, MARAD is providing notice of the services proposed by Cook Aquaculture (Cook) in order to make a U.S.-flag vessel availability determination.

In order to comply with USCG Aquaculture Support regulations at 46 CFR part 106, Cook is seeking a MARAD Aquaculture Waiver to operate the vessels M/V COLBY PERCE and M/V RONJA CARRIER as follows:

Intended Commercial Use of Vessel: ''to use two highly-specialized foreign-flag vessels referred to as ''wellboats'' (or ''live fish carriers'') to treat Cooke's swimming inventory of farmed Atlantic salmon in the company's salt-water grow-out pens off Maine's North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon's health.''

Geographic Region: ''Off Maine's North Atlantic Coast''.

Requested Time Period: ''2017 calendar year, from January 1, 2017 to December 31, 2017''.

Interested parties may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the required aquaculture support services. If MARAD determines, in accordance with 46 U.S.C. 12102(d)(1) and MARAD's regulations at 46 CFR part 388, that suitable U.S.-flag vessels are available to perform the required services, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria set forth in 46 CFR 388.4.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(w).

* * * * *

Dated: December 8, 2016.

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–29894 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0078; Notice No. 2016–14]

Hazardous Materials: Use of DOT Specification 39 Cylinders for Liquefied Flammable Compressed Gas

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety advisory notice.

SUMMARY: PHMSA is issuing this safety advisory notice to inform offerors and users of DOT Specification 39 (DOT–39) cylinders that DOT–39 cylinders with an internal volume exceeding 75 cubic inches (in^3) (1.23 L) should not be filled with liquefied flammable compressed gas. PHMSA maintains filling or transporting DOT–39 cylinders with an internal volume exceeding 75 in^3 (1.23 L) is not safe.

FOR FURTHER INFORMATION CONTACT: Refaat Shafkey, General Engineer, Engineering and Research Division, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone: (202) 366–4545 or, via email: *refaat.shafkey@dot.gov.*

SUPPLEMENTARY INFORMATION:

Public Action Requested

PHMSA advises offerors of DOT–39 cylinders having an internal volume exceeding 75 cubic inches (in^3) (1.23 L) that such cylinders should not be filled with liquefied flammable compressed gas. PHMSA further advises the public not to use any DOT–39 cylinder with an internal volume greater than 75 in^3 (1.23 L) containing a liquefied flammable compressed gas.

Safety Concern

The release of a liquefied flammable compressed gas from or rupture of such a cylinder having an internal volume exceeding 75 in^3 (1.23 L) is a safety concern that could result in extensive property damage, serious personal injury, or even death. A liquefied flammable compressed gas has a stored energy that is several times greater than that of a non-liquefied compressed gas. Further, a DOT–39 cylinder can have a volume of up to 1,526 in^3 (25 L) at a service pressure of 500 psig or less and, as such, can have up to 22 times the stored energy of a DOT–39 cylinder limited to 75 in^3 (1.23 L). Additionally, because of the design specifications that allow for thinner walls when used at lower pressure, the cylinders may be at greater risk from corrosion or puncture. Given the known risks associated with cylinders that are filled with liquefied flammable compressed gases, PHMSA is issuing this safety advisory notice to inform offerors and users of DOT–39 cylinders that cylinders with an internal volume of 75 in^3 (1.23 L) or more should not be filled with liquefied flammable compressed gas.

Background

This safety advisory notice is being issued in part because of concern over confusion about the regulatory requirements when using DOT–39 cylinders for liquefied compressed gases. Historically, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) limited the internal volume of a DOT–39 specification cylinder to 75 in^3 (1.23 L) when used for certain liquefied flammable compressed gases. This size limitation applied when DOT–39 cylinders were used for gases that were subject to Note 9 following the table at § 173.304(a)(2) or liquefied petroleum gas as addressed in § 173.304(d)(3) (The table is currently located at § 173.304a).

In an October 30, 1998 notice of proposed rulemaking (NPRM), the Research and Special Programs Administration (RSPA)—the predecessor agency to PHMSA—proposed to extend the 75 in^3 (1.23 L) volume limitation of DOT–39 cylinders to all liquefied flammable compressed gases by revising § 173.304 to delete Note 9 from the table at § 173.304(a)(2) and adding §§ 173.304a and 173.304b.[1] RSPA received several comments in opposition to extending the limit to all liquefied flammable compressed gases which would have been codified in § 173.304a(a)(3). RSPA published a final rule on August 8, 2002 and, based on the opposing comments, decided not to extend the 75 in^3 (1.23 L) limitation to all liquefied flammable compressed gases in a DOT–39 cylinder at that time. However, in the process of publishing the final rule, the agency inadvertently omitted the 75 in^3 (1.23 L) limitation for liquefied flammable compressed gas and liquefied petroleum gas.[2]

On November 13, 2014, PHMSA accepted a petition for rulemaking (P–1622) from Worthington Cylinders to address this error in a rulemaking. On July 26, 2016, PHMSA published in the **Federal Register** an NPRM titled, ''Hazardous Materials: Miscellaneous Amendments Pertaining to DOT Specification Cylinders (RRR),'' [81 FR 48977; Docket No. PHMSA–2011–0140 (HM–234) [3]] that again proposes to extend the limit on the internal volume of DOT–39 cylinders to use with all liquefied flammable compressed gases, thus correcting the inadvertently omitted size limitation and expanding the applicability to capture those liquefied flammable compressed gases (*e.g.,* difluoromethane (Refrigerant gas R 32)) either not reflected in the § 173.304a(a)(2) table or not considered a liquefied petroleum gas.

Issued in Washington, DC on December 5, 2016.

William S. Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–29813 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–60–P

[1] NPRM—Hazardous Materials: Requirements for DOT Specification Cylinders (HM–220D) [63 FR 58460].

[2] Final Rule—Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders (HM–220D) [67 FR 51625]

[3] *https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16689.pdf.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0065]

Pipeline Safety: High Consequence Area Identification Methods for Gas Transmission Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to remind gas transmission pipeline operators of certain previously issued guidance and provide operators with additional guidance for the identification of High Consequence Areas (HCAs) along pipeline right-of-ways. This advisory bulletin provides suggestions for accurately mapping and integrating HCA data, documenting how mapping systems are used, periodically verifying and updating their mapping systems, utilizing buffer zones (tolerances) to provide additional protection around the calculated potential impact radius (PIR) along their pipelines, and ensuring the accuracy of class locations. The bulletin emphasizes that HCA identification relies on pipeline-specific information regarding the location, size, and operating characteristics of the line, as well as the identification of structures, specified sites, and their intended usage along the pipeline right-of-way.

FOR FURTHER INFORMATION CONTACT: Allan Beshore by phone at 405–834–8344 or email at *allan.beshore@dot.gov.* All materials in this docket may be accessed electronically at *http://www.regulations.gov.* Information about PHMSA may be found at *http://www.phmsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A key component of PHMSA's pipeline safety regulations is its integrity management (IM) program. For gas transmission pipelines, this program is outlined in Subpart O of 49 CFR part 192 and is based on the concept that pipeline operators need to identify those segments of their pipeline systems that pose the greatest risk to human life, property, and the environment, and to take extra precautions to ensure their safety. These higher-risk areas are known as ''HCAs.'' Each operator is required to survey its entire pipeline system to identify all pipeline segments

that could affect HCAs. Since the greatest risk posed by gas transmission pipelines is the risk of fire and explosion resulting from pipeline leaks and ruptures, gas HCAs consist of highly populated areas and ''identified sites'' where people regularly gather or live.

An operator's first step in developing a robust IM program is to properly identify and map all HCAs and perform periodic updates to the evaluation process to maintain accurate and current information. Subpart O of part 192 allows operators flexibility in making determinations to identify HCAs by defining two different identification methods, generally referred to as Method 1 or Method 2.

Both methods require the operator to determine ''identified sites'' and calculate a PIR, using a formula to calculate the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property. While Method 1 includes all pipe segments within Class 3 and Class 4 locations[1] and ''identified areas within a PIR in Class 1 and 2 locations,'' Method 2 includes ''identified sites'' [2] within a PIR only, regardless of the class location, or the combination of ''identified sites'' with 20 or more buildings intended for human occupancy.

A review of PHMSA and state data from ''first-round'' IM inspections indicates a large percentage of intrastate and small operators have been inconsistent in determining HCAs using ''identified sites,'' and operators that initially used Method 1 to identify HCAs have since transitioned to Method 2.

On July 17, 2003, (68 FR 42458) PHMSA published an advisory bulletin titled ''Identified Sites as Part of High Consequence Areas for Gas Integrity Management Programs'' to provide guidance to gas transmission operators on the steps PHMSA expected them to take to determine ''identified sites'' along their pipelines. PHMSA intended the guidance in the advisory bulletin to support operators in identifying these sites for planning their IM programs and determined that certain measures, if properly applied, would satisfy the intent of the regulation.

On December 15, 2003, (68 FR 69778) PHMSA published a final rule titled: ''Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)'' that provided requirements for the identification of HCAs and further explanation of how best to conduct the identification process.

In the preamble of the rule, PHMSA provided the basis for defining an identified site as follows:

Define an identified site as any of the following within a Potential Impact Circle:

1. A facility housing persons of limited mobility that is known to public safety officials, emergency response officials, or local emergency planning committee, and which meets one of the following three criteria: (a) Is visibly marked, (b) is licensed or registered by a Federal, state, or local agency, or (c) is listed on a map maintained by or available from a Federal, State, or local agency, or

2. An outdoor area where people congregate that is known to public safety officials, emergency response officials or local emergency planning committee and which is occupied by 20 or more people on at least 50 days per year, or

3. A building occupied by 20 or more people 5 days per week, 10 weeks in any 12-month period (the days and weeks need not be consecutive).

To assist operators in meeting the requirements of the regulation, PHMSA introduced a ''buffer zone'' concept. This additional safety margin was intended to compensate for inaccuracies (*e.g.,* incorrect pipeline center data or mapping errors) when implementing the regulation and determining the PIR. As defined in § 192.903, a PIR is the radius of the potential impact circle (PIC), measured in feet surrounding the point of failure, within which the potential failure of a pipeline could have significant impact on people or property. Part 192 provides the formula for determining a PIR that takes into account the Maximum Allowable Operating Pressure (MAOP) in the pipeline segment in pounds per square inch, the nominal diameter of the pipeline in inches, and a numeric factor, which varies for other gases depending upon their heat of combustion.[3]

Following the publication of the regulations and advisory bulletin, PHMSA inspections have revealed that operators may need further guidance regarding the identification of HCAs, as operators have been inconsistent in determining HCAs using ''identified sites.''

Additionally, in CY 2015, the National Transportation Safety Board (NTSB) published SS–15–01, ''Safety Study: Integrity Management of Gas Transmission Pipelines in High Consequence Areas.'' The study was conducted in response to concerns about deficiencies in operators' IM programs that had been identified by the NTSB in three gas transmission pipeline accidents from the previous 5 years. Recommendation P–15–06, issued as a part of the study, recommended that PHMSA ''[a]ssess the limitations associated with the current process for identifying high consequence areas, and disseminate the results of [the] assessment to the pipeline industry, inspectors, and the public.'' PHMSA has noted that proper identification of an HCA and periodic verification relies on two key types of information: (1) Pipeline-specific information that includes the accurate location of the centerline of the pipeline, the nominal diameter of the pipeline, and the pipeline segment's MAOP; and (2) all the structures and their usage (including occupancy) located along the pipeline. PHMSA subject matter experts performed an assessment of the impact of these two issues on identifying HCAs using Methods 1 and 2 as defined in § 192.903, by reviewing failure investigations, inspector experiences, and Gas IM inspection results and has documented these insights in this advisory bulletin. PHMSA will be including these insights in updated inspection materials, as appropriate.

PHMSA is publishing this advisory bulletin to meet NTSB Recommendation P–15–06 by providing operators with additional guidance on how to improve the accuracy of their class location identification process, which may also lead to operators improving HCA identification.

[1] Under 49 CFR 192.5, all transmission pipelines fall into one of four ''class locations.'' Class 1 locations are offshore areas and all segments (''class location units'') one mile in length that contain 10 or fewer buildings intended for human occupancy Class 2 locations are units with more than 10, but fewer than 46, such buildings. Class 3 locations are units with 46 or more buildings or an area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground or recreation area) that is occupied by 20 or more people on at least 5 days a week for 10 weeks in any 12-month period. Class 4 locations are units where buildings with 4 or more stories are prevalent.

[2] ''Identified sites'' is a defined term under 49 CFR 192.903 in PHMSA's IM regulations and refers generally to the type of specific areas included under the Class 3 location definition above, plus facilities occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate, including schools, prisons, nursing homes, etc.

[3] Operators transporting gas other than natural gas must use section 3.2 of ASME/ANSI B31.8S (incorporated by reference, see § 192.7) to calculate the impact radius formula. For flammable gases, additional information on factors may be found in TTO–13, Potential Impact Radius Formulae for Flammable Gases Other Than Natural Gas Subject to 49 CFR 192, June 2005, Table 7.1 which can be found in *http://primis.phmsa.dot.gov/gasimp/docs/TTO13_PotentialImpactRadius_FinalReport_June2005.pdf*).

II. Advisory Bulletin (ADB–2016–07)

To: Owners and Operators of Natural Gas Pipelines.

Subject: High Consequence Area Identification Methods.

Advisory: PHMSA is issuing this advisory bulletin to inform owners and operators of gas transmission pipelines that PHMSA has developed guidance on the identification and periodic verification of HCAs, including the application of a buffer zone to the PIR, and information regarding the accuracy of class locations. PHMSA is recommending that operators review and consistently monitor class location and PIR data on an annual basis as part of their IM program. PHMSA anticipates this annual review will improve the accuracy of operator HCA determinations.

A review of early PHMSA inspections has shown that many operators (28%) did not have procedures to adequately describe how to identify HCAs, using Method 1 or Method 2. To effectively use Method 2, operators should have a detailed and documented process in place to monitor the conditions surrounding their pipelines, including the existence of ''identified sites.'' Therefore, PHMSA is reminding operators of the existing guidance for making those determinations and is providing additional recommendations on how to improve the accuracy of HCA identification. Specifically:

- PHMSA expects that most large operators will use a geographic information system or similar mapping software for segment identification. Operators should be able to demonstrate the usability of their system and show a graphical overlay of HCAs with their pipeline system.
- An operator not using geographic information system or similar mapping software should describe or demonstrate how it performed its HCA segment identifications.
- For both geographic information system-based and non-geographic information system-based HCA identification processes, the operator should address how it will deal with tolerances (or buffers) on top of the calculated PIR regarding the accuracy of measured distances to structures and the location of the pipeline centerline. PHMSA recognizes that global positioning system measurements and maps have some limitations in their accuracy; however, the rule applies to pipelines—and distances from those pipelines—as they actually exist in the field.

PHMSA also reminds operators of the need to continually improve the accuracy of their pipeline data. As technology advances, pipeline operators have more access to tools that provide improved accuracy for determining class locations (including the determination of the centerline of the pipeline), the application of aerial photography, pipeline operating characteristics (diameter, grade, MAOP), population studies, and mapping software. It is important that operators continuously improve the accuracy of the data and conduct the required class location studies as required in § 192.609, along with the confirmation or revision of MAOP in § 192.611, as this affects the operation of their pipelines. Operators should include provisions in their continuing surveillance monitoring procedures (§ 192.613) to constantly monitor the surrounding conditions, report that information, and update their maps each calendar year. This is similar to the requirements for including newly identified areas for segments in HCAs (§ 192.905(c)) and for filing annual report information relating to the performance of IM plans (§ 191.17).

Operators must use MAOP when calculating PIR, and accurate pipeline data is necessary to ensure that operators are correctly applying the MAOP value in the PIR calculation when determining whether areas qualify as HCAs. PHMSA also recommends that operators review their pipeline centerline and map data to account for any potential inaccuracies or data limitations and to add an appropriate buffer zone to the calculated PIR. This would establish a PIR that includes any areas that could potentially be excluded due to data limitations.

A list of PHMSA-provided frequently asked questions on this subject can be found on the gas IM site at: *https://primis.phmsa.dot.gov/gasimp/index.htm.* Gas IM Frequently Asked Question Number 174 reminds operators that they should consider the uncertainties in the distances they measure or infer when evaluating PICs and consider geographic information system accuracy in locating HCAs:

''. . . Operators may use a combination of techniques in order to account for these inaccuracies. For instance, aerial photography may be used as an initial screen. Field measurements (such as pipeline locators along with chainage measurements or survey quality range finders) may be used to verify if structures near the edge of the PIC (*i.e.,* within the range of mapping/geographic information system inaccuracies) are actually inside or outside the PIC. PHMSA will inspect each operator's approach to assure that the operator's process is adequate to identify all covered segments.''

PHMSA recommends operators frequently and consistently review their data—including class location data—for potential inaccuracies or limitations, and add a buffer zone to the calculated PIR to help ensure proper HCA identification. The purpose and usage of buildings, open structures, and outside areas can shift over time, changing the number of ''identified sites'' in a PIR, and therefore, whether an area is an HCA. PHMSA believes that if operators review class location and PIR data on an annual basis as a part of their IM programs, the accuracy of HCA determinations will be greatly improved.

Issued in Washington, DC, on December 8, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–29880 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice of funding availability for the Northwest Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, or chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Northwest Region (Alaska, Idaho, Oregon, and Washington).

DATES: Complete Proposals must be received on or February 3, 2017, 6:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed.

ADDRESSES: Applications must be electronically submitted through *Grants.gov*. Only applicants who comply with all submission requirements described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Steronica Mattocks, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., Washington, DC, 20590. Telephone: (202) 366–0658. Email: *sbtrc@dot.gov.*

SUPPLEMENTARY INFORMATION: OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU/SBTRCNW–2017–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $175,000.

Award Floor: $160,000.

Program Authority: DOT is authorized under 49 U.S.C. 332 (b) (4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

Table of Contents

A. Program Description and Goals
B. Federal Award Information
C. Eligibility Information
1. Eligible Applicant
2. Program/Recipient Requirements
3. Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities
D. Application and Submission Information
E. Application Review
1. Selection Criteria
a. Approach and Strategy
b. Linkages
c. Organizational Capability
d. Staff Capabilities and Experience
e. Cost Proposal (Budget)
f. Scoring Application
g. Conflicts of Interest
2. Review and Selection Process
F. Federal Award Administration
a. Administrative and National Policy Requirements
b. Reporting
G. Federal Awarding Agency Contacts
H. Protection of Confidential Business Information

A. Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (*i.e.* The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their · outreach efforts to be effective, SBTRCs must be familiar with DOT' s Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, DOT Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

B. Federal Award Information

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section, 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under 49 CFR parts 23 and 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions. The SBTRCs are established and funded through Cooperative Agreements between eligible applicants mid OSDBU. The SBTRCs function as regional offices of

OSDBU and fully execute the mission of the OSDBU nationally.

OSDBU enters into Cooperative Agreements with recipients to establish and fund a regional SBTRC. Under the Cooperative Agreement OSDBU will be ''substantially involved'' with the overall operations of the SBTRC. This involvement includes directing SBTRC staff to travel and represent OSDBU on panels and events. OSDBU will make one award under this announcement. Award ceiling for this announcement is $175,000. The recipient will begin performing on the award on March 1, 2017 and the period of performance (POP) will be March 1, 2017 to February 28, 2018. This is a 1 year grant with an option to renew for 2 additional years at the discretion of U.S. DOT.

Cooperative agreement awards will be distributed to the region(s) as follows:

Northwest Region

Ceiling: $175,000 per year

Floor: · $160,000 per year

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding will reimburse an on-site Project Director for *100%* of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. The SBTRC will furnish all labor, facilities and equipment to perform the services described in this announcement.

C. Eligibility Information

1. Eligible Applicant

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(a) Be an established 501 C (3) or 501 C (6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(b) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(c) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements/Recipient Responsibilities

(a) Assessments, Business Analyses

Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

(b) General Management and Technical Training and Assistance

Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. A complete list of businesses that have filled out the form shall be submitted as part of the SBTRC report, submitted via email to the Regional Assistance Division on a regular basis (using the SBTRC report). This report will detail SBTRC activities and performance results. The data provided must be supported by the narrative (if asked).

Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities. Coordinate efforts with OSDBU in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(c) Business Counseling

Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month. This counseling includes in-person meetings or over the phone, and does not include any time taken to do email correspondence.

(d) Planning Committee

Establish a Regional Planning Committee consisting of at least 10 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRCs region state must have representation on the planning committee.

The committee shall be established no later than 60 days after the execution of the Cooperative Agreement between the OSDBU and the selected SBTRC. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming DOT procurements and SBTRC activities.

Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members (conference calls and/or video conferences are acceptable).

Use the initial session hosted by the SBTRC to explain the mission of the committee and identify roles of staff and the members of the group.

Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Project Director or his/her designee.

(e) Outreach Services/Conference Participation

Utilize the services of the System for Award Management (SAM) and other

sources to construct a database of regional small businesses that currently are or may in the future participate in DOT direct and DOT funded transportation related contracts and make this database available to OSDBU upon request. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, *i.e.,* access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the regional Assistance Division for review and posting on the OSDBU Web site on a regular basis. Clearly identity the events designated for SBTRC participation and include recommendations for OSDBU participation. Thisinformation can be submitted as part of the SBTRC report.

Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the OSDBU will provide DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

Submit a conference summary report within the ''Events'' section of the SBTRC Report. The conference summary report should summarize the activity, contacts made, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor and OSDBU transportation related conference in the region (commonly referred to as ''Small Business Summits'').

Participate in the SBTRC Monthly teleconference call, hosted by the OSDBU Regional Assistance Division.

(f) Short Term Lending Program (STLP)

Work with STLP participating banks and if not available, other institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP, and/or other financial assistance programs, to the transportation-related small business community. Seminars/workshops must cover the entire STLP/loan process, form completion of STLP/loan applications and preparation of the loan package.

Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of four (4) completed STLP applications per year.

Provide direct support, technical support, and advocacy services to Small and Disadvantaged Businesses interested in obtaining a loan from another type of Government Lending Program. Government Lending Programs include Federal, State, and Local level programs. The SBTRC will be required to generate a minimum of three (3) completed Government Lending Program applications per year.

(g) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of two (2) complete Bonding Education Programs and secure 3% of the total DBE contract value for each transportation project. The BEP consists of the following components; (1) the stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants to provide technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver a minimum of ten (10) disadvantaged business participants in the BEP with either access to bonding or an increase in the bonding capacity. The programs will be funded separately and in addition to the amount listed in 1.3 of the solicitation.

(h) Women and Girls in Transportation Initiative (WITI)

Pursuant to *Executive Order 13506,* and *49 U.S.C. 332 (b)(4) & (7),* the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation enemies in their region. The WITI program shall be developed in conjunction with the skill needs of the US DOT, state and local transportation agencies and appropriate private sector transportation related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

Each region will establish a Women and Girls in Transportation Advisory Committee. The committee will provide a forum to identify and provide workable solutions to barriers that women-owned businesses encounter in transportation-related careers. The committee will have 5 members (including the SBTRC Project Director) with a 1 year membership. Meetings will be conducted on a quarterly basis at an agreeable place and time.

3. Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(a) Provide consultation and technical assistance in planning, implementing, and evaluating activities under this announcement.

(b) Provide orientation and training to the applicant organization.

(c) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(d) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(e) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(f) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(g) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(h) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(i) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

D. Application and Submission Information

(a) Format for Proposals

Each proposal must be submitted to *Grants.gov* in the format set forth in the application form attached as Appendix A to this announcement.

(b) Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section C of this announcement, will submit only one proposal per region for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to *Grants.gov*.

(c) Each applicant must be registered in System for Award Management (SAM) · and provide their unique Entity Identifier with the proposal.

(d) Each application must include the most recent two years of the applying organization's financial statements. We prefer to receive audited, but reviewed financial statements are acceptable.

(e) Applications will not be accepted if they do not include all required information.

(f) Proposals must be received in *Grants.gov* no later than February 3, 2017, 6:00 p.m. Eastern Standard Time (EST).

E. Application Review

1. Selection Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(a) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described. in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section C will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(b)Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build Upon their existing relationships and establish networks with existing resources in their geographical area. The applicant should describe their strategy to obtain and collaboration on SBTRC from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), State DOTs, and State Highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to multidimensional.

The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(c) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section C. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to transportation-related small businesses in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small business in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(d) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, education levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all

proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive and Project Directors must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(e) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section B. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

(f) Scoring Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

(g) Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

2. Review and Selection Process

A team of people will evaluate the proposals. Those proposals meeting the mandatory criteria will be assessed based on the above mentioned criteria. The proposals demonstrating the organization's capacity to fully execute the requirements of this grant will be considered. The proposal receiving the highest overall score will be awarded.

F. Federal Award Administration

Following the evaluation outlined in Section E, the OSDBU will announce the awarded applicant with a written Notice of Funding Award. The NOFA will also include the cooperative agreement for signature.

(a) Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Cost Principles and Audit Requirements for Federal Awards found in *2 CFR part 200,* as adopted by DOT as 2 CFR partl201.

(b) Reporting

Performance Reporting—The recipient of this cooperative agreement must collect information and report on the cooperative agreement performance with respect to the relevant deliverables that are expected to be achieved through the cooperative agreement. Performance indicators will include formal goals or targets, but will include baseline measures for an agreed-upon timeline, and will be used to evaluate and monitor the results that the cooperative agreement funds achieve to ensure that funds achieve the intended long-term outcomes of the cooperative agreement program.

Progress Reporting—The recipient for this cooperative agreement funding must submit quarterly progress reports and annual Federal Financial Report (SF-425) on the financial condition of the cooperative agreement and its progress, as well as an Annual Budget Review and Implementation Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the program.

G. Federal Awarding Agency Contracts

For further information this notice please contact the OSDBU program staff via email at *sbtrc@dot.gov,* or call Ms. Steronica Mattocks at 202–366–0658. To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions.

H. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT received a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulation as *49 CFR 7.17.* Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued On: December 5, 2016.

Torre Jessup,

Director.

[FR Doc. 2016–29836 Filed 12–12–16; 8:45 am]

BILLING CODE 4910–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Availability of a Draft Environmental Impact Statement for a Replacement Veterans Affairs Medical Center, Louisville, Kentucky; Comment Period Extension

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability; Comment period extension.

SUMMARY: On October 27, 2016, the Department of Veterans Affairs (VA) published, in the **Federal Register**, the Notice of Availability of a Draft Environmental Impact Statement (EIS) for a Replacement VA Medical Center (VAMC) and Veterans Benefits Administration (VBA) regional office in Louisville, Kentucky, that analyzes the potential impacts of three alternatives for changes to VA's facilities in the Louisville area. Two public hearings on the Draft EIS were held in Louisville on November 15, 2016, which were attended by over 200 people. Since then, VA has received many requests from stakeholders for more time to review and analyze the document due to its size and the controversy surrounding

the preferred alternative. After considering these requests and other factors, VA is extending the comment period for the Draft EIS by 30 days, from December 12, 2016 to January 11, 2017.

DATES: All comments must be submitted by January 11, 2017.

ADDRESSES: Submit written comments on the Draft EIS at *www.Louisville-EIS.com,* by email to *Louisville ReplacementHospitalComments@va.gov,* or by regular mail to Robley Rex VAMC, Replacement VAMC Activation Team Office (Attn: Judy Williams), 800 Zorn Avenue, Louisville, KY.

FOR FURTHER INFORMATION CONTACT: Replacement VAMC Activation Team Office, 800 Zorn Avenue, Louisville, KY 40206 or by email to *Louisville ReplacementHospitalComments@va.gov.*

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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document, for publication.

Dated: December 7, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–29871 Filed 12–12–16; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2014–BT–STD–0021]

RIN 1904–AD24

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA or the Act), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential dishwashers. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final rule, DOE has determined that more stringent residential dishwasher standards would not be economically justified, and, thus, does not amend its energy conservation standards for residential dishwashers. DOE also eliminates an obsolete dishwasher test procedure that is no longer used to demonstrate compliance with the existing energy conservation standards.

DATES: This rule is effective January 12, 2017. The incorporation by reference of the standards listed in this rule was approved by the Director of the Federal Register on December 17, 2012.

ADDRESSES: This rulemaking can be identified by docket number EERE–2014–BT–STD–0021 and/or regulatory information number (RIN) 1904–AD24.

Docket: The docket, which includes **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, such as those containing information that is exempt from public disclosure, may not be publicly available, such as those containing information that is exempt from public disclosure.

The docket Web page can be found at: *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0021*. The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, 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) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Final Rule
II. Introduction
A. Authority
B. Background
1. Current Standards
2. History of Standards Rulemaking for Residential Dishwashers
III. General Discussion
A. Product Classes and Scope of Coverage
B. Test Procedure
C. Technological Feasibility
1. General
2. Maximum Technologically Feasible Levels
D. Energy Savings
1. Determination of Savings
2. Significance of Savings
E. Economic Justification
1. Specific Criteria
a. Economic Impact on Manufacturers and Consumers
b. Savings in Operating Costs Compared To Increase in Price
c. Energy Savings
d. Lessening of Utility or Performance of Products
e. Impact of Any Lessening of Competition
f. Need for National Energy Conservation
g. Other Factors
2. Rebuttable Presumption
F. Other Issues
IV. Methodology and Revisions to the Analyses Employed in the 2014 Proposed Rule
A. Market and Technology Assessment
B. Screening Analysis
1. Screened-Out Technologies
2. Remaining Technologies
C. Engineering Analysis
1. Efficiency Levels
a. Data Sources
b. Consumer Utility
c. Final Rule Efficiency Levels
2. Manufacturer Production Cost Estimates
D. Markups Analysis
E. Energy and Water Use Analysis
F. Life-Cycle Cost and Payback Period Analysis
1. Product Cost
2. Installation Cost
3. Annual Energy and Water Consumption
4. Energy Prices
5. Water and Wastewater Prices
6. Maintenance and Repair Costs
7. Product Lifetime
8. Discount Rates
9. Efficiency Distribution in the No-New-Standards Case
10. Payback Period Analysis
G. Shipments Analysis
H. National Impact Analysis
1. Product Efficiency Trends
2. National Energy and Water Savings
3. Net Present Value Analysis
I. Consumer Subgroup Analysis
J. Manufacturer Impact Analysis
1. Overview
2. Government Regulatory Impact Model and Key Inputs
a. Manufacturer Production Costs
b. Shipments Projections
c. Product and Capital Conversion Costs
d. Markup Scenarios
3. Discussion of Comments
4. Manufacturer Interviews
K. Emissions Analysis
L. Monetizing Carbon Dioxide and Other Emissions Impacts
1. Social Cost of Carbon
a. Monetizing Carbon Dioxide Emissions
b. Development of Social Cost of Carbon Values
c. Current Approach and Key Assumptions
2. Social Cost of Other Air Pollutants
M. Utility Impact Analysis
N. Employment Impact Analysis
V. Analytical Results and Conclusions
A. Trial Standard Levels
B. Economic Justification and Energy Savings
1. Economic Impacts on Individual Consumers
a. Life-Cycle Cost and Payback Period
b. Consumer Subgroup Analysis
c. Rebuttable Presumption Payback
2. Economic Impacts on Manufacturers
a. Industry Cash Flow Analysis Results
b. Direct Impacts on Employment
c. Impacts on Manufacturing Capacity
d. Impacts on Sub-Groups of Manufacturers
e. Cumulative Regulatory Burden
3. National Impact Analysis
a. Significance of Energy Savings
b. Net Present Value of Consumer Costs and Benefits
c. Indirect Impacts on Employment
4. Impact on Utility or Performance of Products
5. Impact of Any Lessening of Competition
6. Need of the Nation To Conserve Energy
7. Other Factors
8. Summary of National Economic Impacts
C. Conclusion
VI. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866 and 13563
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act

D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under the Information Quality Bulletin for Peer Review
M. Congressional Notification
VII. Approval of the Office of the Secretary

I. Synopsis of the Final Rule

Title III, Part B [1] of EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] This program covers most major household appliances, including the residential dishwashers that are the subject of this document. (42 U.S.C. 6292(a)(6)) EPCA, as amended, prescribed energy conservation standards for residential dishwashers and directed DOE to conduct additional rulemakings to determine whether to amend those standards. (42 U.S.C. 6295(g)(1) and (10)(A) and (B)) DOE is issuing this final rule pursuant to 42 U.S.C. 6295(m), which states that DOE must periodically review its already established energy conservation standards for a covered product not later than 6 years after issuance of any final rule establishing or amending such standards. As a result of such review, DOE must either publish a notice of proposed rulemaking to amend the standards or publish a notice of determination indicating that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)(A) and (B))

Based on the evidence summarized in section V.C of this document, the Secretary has determined that amended standards for residential dishwashers are not economically justified. Specifically, the Secretary has determined that the benefits of energy savings, positive net present value of consumer benefits, and emission reductions of more-stringent standards are outweighed by the economic burden on over half of dishwasher consumers. Furthermore, the impacts on manufacturers, including the conversion costs and profit margin impacts, could result in a large reduction in industry net present value. Therefore, DOE has determined not to amend the energy conservation standards for residential dishwashers.

DOE is eliminating an obsolete dishwasher test procedure in appendix C that is no longer used to demonstrate compliance with existing energy conservation standards. DOE is making corresponding amendments to 10 CFR 429 and 430.23 to remove references to the eliminated appendix C. DOE is also amending the introductory note to the current test procedure at title 10 of the CFR part 430, subpart B, appendix C1 (appendix C1) to clarify that it shall be used to determine compliance with energy conservation standards and to make any representations related to energy and/or water consumption.

II. Introduction

A. Authority

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for residential dishwashers are included in appendix C1.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including residential dishwashers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

EPCA also requires that, in any final rule for new or amended energy conservation standards promulgated after July 1, 2010, DOE is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures in appendix C1 for residential dishwashers address standby mode and off mode energy use.

B. Background

1. Current Standards

In a direct final rule published on May 30, 2012 (2012 Direct Final Rule), DOE prescribed the current energy conservation standards for residential dishwashers manufactured on or after May 30, 2013. 77 FR 31918. These standards are set forth in DOE's regulations at 10 CFR 430.32(f)(3) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

Product class	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
Standard	307	5.0
Compact	222	3.5

2. History of Standards Rulemaking for Residential Dishwashers

EPCA required that residential dishwashers be equipped with an option to dry without heat. EPCA further required that DOE conduct two cycles of rulemakings to determine if amended standards are justified. (42 U.S.C. 6295(g)(1) and (4))

On May 14, 1991, DOE issued a final rule establishing performance standards for residential dishwashers to complete the first required rulemaking cycle. 56 FR 22250. Compliance with the new standards, codified at 10 CFR 430.32(f), was required on May 14, 1994.

DOE then conducted a second standards rulemaking for residential dishwashers. DOE issued an advance notice of proposed rulemaking (ANOPR) on November 14, 1994, to consider amending the energy conservation standards for residential clothes washers, dishwashers, and clothes dryers. 59 FR 56423. Subsequently, DOE published a Notice of Availability of the ''Rulemaking Framework for Commercial Clothes Washers and Residential Dishwashers, Dehumidifiers, and Cooking Products.'' 71 FR 15059 (Mar. 27, 2006). On November 15, 2007, DOE published a second ANOPR addressing energy conservation standards for these products. 72 FR 64432.

EPCA was subsequently amended to establish maximum energy and water use levels for residential dishwashers manufactured on or after January 1, 2010. (42 U.S.C. 6295(g)(10)(A)) DOE codified the statutory standards for these products in a final rule published March 23, 2009. 74 FR 12058. EPCA also required DOE to conduct a rulemaking, by no later than January 1, 2015, to determine if the standards for residential dishwashers should be amended, and if so, to publish amended standards. (42 U.S.C. 6295(g)(10)(B))

The current energy conservation standards for residential dishwashers were submitted to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups on September 25, 2010. This collective set of comments, titled ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''Joint Petition'' [3]), recommended specific energy conservation standards for residential dishwashers that, in the commenters' view, would satisfy the EPCA requirements. (42 U.S.C. 6295(o)) DOE conducted its rulemaking analyses on multiple residential dishwasher efficiency levels, including those suggested in the Joint Petition. In the 2012 Direct Final Rule, DOE established energy conservation standards for residential dishwashers manufactured on or after May 30, 2013, consistent with the levels suggested in the Joint Petition and in satisfaction of the requirement set forth in 42 U.S.C. 6295(g)(10)(B). 77 FR 31918 (May 30, 2012).

DOE is conducting the current energy conservation standards rulemaking pursuant to 42 U.S.C. 6295(m), which requires that within 6 years of issuing any final rule establishing or amending a standard, DOE shall publish either a notice of determination that amended standards are not needed or a notice of proposed rulemaking (NOPR) including new proposed standards. DOE published a NOPR proposing amended standards on December 19, 2014 (2014 NOPR), in which it considered additional information not available at the time of the 2012 Direct Final Rule. 79 FR 76141. In conjunction with the 2014 NOPR, DOE posted on its Web site the associated technical support document (TSD). The TSD included the results of DOE's analyses, including: (1) The market and technology assessment, (2) screening analysis, (3) engineering

[3] DOE Docket No. EERE–2011–BT–STD–0060, Comment 1.

analysis, (4) energy and water use determination, (5) markups analysis to determine product price, (6) life-cycle cost (LCC) and payback period (PBP) analyses, (7) shipments analysis, (8) national energy savings (NES) and national impact analysis (NIA), and (9) manufacturer impact analysis (MIA). On February 5, 2015, DOE held a public meeting to receive comments from interested parties on the proposals in the 2014 NOPR.

DOE received a number of comments from interested parties in response to the 2014 NOPR. DOE considered these comments, as well as comments from the public meeting, in preparing this final rule. The commenters are summarized in Table II.2. Relevant comments and DOE's responses are provided in the appropriate sections of this final rule.

TABLE II.2—INTERESTED PARTIES PROVIDING COMMENTS ON THE 2014 NOPR FOR RESIDENTIAL DISHWASHERS

Name	Acronym	Commenter type *
Appliance Standards Awareness Project, Natural Resources Defense Council, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Consumers Union, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council.	The Joint Commenters	EA
Association of Home Appliance Manufacturers	AHAM	TA
BSH Home Appliances Corporation	BSH	M
Edison Electric Institute	EEI	U
Energy Solutions	Energy Solutions	RO
GE Appliances and Lighting	GE	M
Mercatus Center at George Mason University	Mercatus Center	RO
Natural Resources Defense Council	NRDC	EA
Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (the California Investor-Owned Utilities).	CA IOUs	U
People's Republic of China	China	GA
Samsung Electronics America, Inc.	Samsung	M
U.S. Chamber of Commerce, American Chemistry Council, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Brick Industry Association, Council of Industrial Boiler Owners, National Association of Manufacturers, National Mining Association, National Oilseed Processors Association.	The Associations	TA
Whirlpool Corporation	Whirlpool	M

* EA: Efficiency Advocate; GA: Government Agency; M: Manufacturer; RO: Research Organization; TA: Trade Association; U: Utility.

III. General Discussion

DOE developed this final rule after considering comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses some of the issues raised by these commenters. Comments on the methodology for DOE's analysis are presented in the relevant sections in section IV of this final rule.

A. Product Classes and Scope of Coverage

Existing energy conservation standards divide residential dishwashers into two product classes based on capacity (*i.e.,* the number of place settings and serving pieces that can be loaded in the product as specified in American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DW–1–2010, *Household Electric Dishwashers* (ANSI/AHAM Standard DW–1–2010)):

- Standard (capacity equal to or greater than eight place settings plus six serving pieces); and
- Compact (capacity less than eight place settings plus six serving pieces).

In the 2014 NOPR, DOE proposed to maintain the existing standard and compact product classes for residential dishwashers because it determined that compact residential dishwashers provide unique utility by means of their countertop or drawer configurations. 79 FR 76142, 76149 (Dec. 19, 2014).

Mercatus Center disagreed with the separation of residential dishwashers into product classes on the basis of capacity, stating that such classification was overly broad. (Mercatus Center, No. 11 at p. 5) [4] China noted that the standards proposed in the 2014 NOPR are fixed values for the standard product class, and that these values may be too strict for larger residential dishwashers within the standard product class. China suggested a specific standard for these products. (China, No. 25 at p. 3) DOE has not identified any performance-related feature affecting consumer utility that would justify differing residential dishwasher standards within each of the proposed product classes under 42 U.S.C. 6295(q), and maintains that the unique utility of countertop and drawer configurations warrants differentiation of residential dishwashers into standard and compact product classes by capacities. The two product classes each cover a range of capacities. However, although the existing definition of the standard product class specifies a minimum capacity, it does not specify an upper limit on capacity. DOE reviewed the certified energy and water consumption levels for the highest-capacity dishwashers currently available on the market in the United States (*i.e.,* those with capacities of 16 place settings), and observed multiple models from different manufacturers that are ENERGY STAR-qualified. Therefore, DOE concludes that no alternate product class structure is required to adequately consider revised energy conservation standards for higher-capacity products, and DOE is not amending the product classes for residential dishwashers in this final rule.

[4] A notation in the form ''Mercatus Center, No. 11 at p. 5'' identifies a written comment: (1) Made by the Mercatus Center at George Mason University; (2) recorded in document number 11 that is filed in the docket of this energy conservation standards rulemaking (Docket No. EERE–2014– BT–STD–0021) and available for review at *www.regulations.gov*; and (3) which appears on page 5 of document number 11.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for residential dishwashers are expressed in terms of estimated annual energy use (EAEU), in kWh/year, and water consumption, in gal/cycle (*see* 10 CFR 430.32(f)(3)). The current version of the test procedure at 10 CFR 430.23(c) includes provisions for determining these values as well as estimated annual operating cost (EAOC), based upon testing procedures contained in appendix C1.

In the 2014 NOPR, DOE proposed to delete an obsolete version of the residential dishwasher test procedure codified at 10 CFR part 430, subpart B, appendix C, and re-designate appendix C1 as appendix C. DOE did not receive any objections to the proposed elimination of the obsolete version of the test procedure, and is removing the obsolete test procedure. However, to avoid potential confusion from renaming the current test procedure, DOE is not redesignating appendix C1 as appendix C; DOE is maintaining its designation as appendix C1. Additionally, DOE is revising the text in both 10 CFR 429.19 and 10 CFR 430.23 to account for the removal of the obsolete test procedure, and revising the introductory note in appendix C1 to clarify that it is the applicable test procedure.

DOE received a number of comments which raised concerns about the repeatability and reproducibility of results obtained from appendix C1, and on whether the test procedure is representative of actual consumer use. DOE will address these concerns in a separate test procedure rulemaking and will seek information on these issues in a request for information.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this final rule discusses the results of the screening analysis for residential dishwashers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE considers amended standards for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for residential dishwashers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this final rule and in chapter 5 of the final rule TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from application of the TSL to residential dishwashers purchased in the 30-year period that begins in the year of compliance with any amended standards (2019–2048).[5] The savings are measured over the entire lifetime of residential dishwashers purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its NIA spreadsheet model to estimate energy savings from potential amended standards for residential dishwashers. The NIA spreadsheet model (described in section IV.H of this final rule) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[6] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this final rule.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in the context of EPCA to be savings that

[5] Each TSL is comprised of specific efficiency levels for each product class. The TSLs considered for this final rule are described in section IV.A of this final rule. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[6] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

are not ''genuinely trivial.'' The energy savings for all of the TSLs considered in this rulemaking are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential amended standards on manufacturers, DOE conducts a MIA, as discussed in section IV.J of this final rule. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value (NPV) of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this final rule.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for amending an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this final rule, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) As described in the engineering analysis (see section IV.C of this final rule), DOE considered efficiency levels based on the range of products currently available on the market, and analyzed design options based on those observed in such products. Because DOE is not amending the existing standards for residential dishwashers, this rulemaking will not reduce the utility or performance of the products under consideration.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) Because DOE is not amending energy conservation standards for residential dishwashers, no consulatation with the Department of Justice pursuant to 42 U.S.C. 6295(o)(2)(B)(ii) is necessary.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from any amended standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this final rule.

Amended standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and

use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this final rule; the emissions impacts are reported in section IV.K of this final rule. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this final rule.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.'' No other factors were deemed to be relevant for this final rule.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this final rule.

F. Other Issues

DOE received a number of general comments regarding the analysis process and standards in general, and specific comments related to DOE's process guidance at 10 CFR part 430, subpart C, Appendix A. Samsung commented in support of more stringent standards for residential dishwashers, which it stated would encourage innovation and would provide large benefits to U.S. consumers by way of significant energy and water savings. (Samsung, No. 19 at p. 2) The CA IOUs and Joint Commenters also supported the proposed standards. (CA IOUs, No. 23 at p. 1; Joint Commenters No. 22 at p. 1)

EEI stated that in this rulemaking, DOE elected to depart from the Process Improvement Rule by eliminating the Framework stage and the Preliminary Analysis. EEI stated that the effect of this change is to provide interested parties with only one opportunity to impact the outcome of the proposed rule, which conflicts with the Process Improvement Rule provisions. (EEI, No. 20 at p. 3)

More specifically, commenters noted that DOE guidance at 10 CFR part 430, subpart C, appendix A states that DOE will publish an ANOPR prior to issuance of a proposed standards rule. In EISA 2007, Congress eliminated the requirement for DOE to publish an ANOPR for rulemakings to establish or amend an energy conservation standards. In many cases, DOE publishes a framework document and preliminary analysis prior to publishing a proposed standards. For this rulemaking, however, DOE relied primarily on data and analysis from the recent 2012 Direct Final Rule rather than a preliminary analysis in developing the 2014 NOPR. Commenters also expressed concerns regarding three specific objectives outlined in 10 CFR part 430, subpart C, appendix A, section 1: (a), (d), and (f). Objective (a) is to provide for early input from stakeholders in the rulemaking process. In addition to the opportunities for public input on the 2012 rulemaking, DOE engaged stakeholders in a public meeting after publishing the 2014 NOPR, and conducted extensive manufacturer interviews following the 2014 NOPR. Objective (d) is to eliminate problematic design options early in the process. In the 2014 NOPR, DOE evaluated all technology options against the criteria outlined in the screening analysis (*see* section IV.B of this final rule), and then discussed conclusions regarding design options in subsequent manufacturer interviews. Objective (f) is to conduct thorough analysis of impacts. In the 2014 NOPR, DOE conducted all relevant impact analyses and requested any relevant information from stakeholders. DOE received feedback in response to these analyses, and as discussed in section IV of this final rule, has incorporated stakeholder feedback into the analyses for this final rule. In developing the analysis for this final rule, DOE's process, which included extensive stakeholder input, was consistent with the objectives outlined in 10 CFR part 430, subpart C, appendix A, section 1.

Mercatus Center commented in response to the 2014 NOPR that the treatment of market barriers is inconsistent with evidence that consumers are informed about efficiency issues and that this information allows them to make economically efficient choices of residential dishwashers. (Mercatus Center, No. 11 at pp. 3–5)

This comment appears to be referring to section VI.A of the 2014 NOPR, in which DOE, responding to requirements of Executive Order 12866, ''Regulatory Planning and Review,'' briefly describes the problems that the proposed standards address. One of the problems mentioned is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the residential dishwasher market. However, it is difficult to determine the significance of this problem. The commenter presents data showing the popularity of ENERGY STAR-certified residential dishwashers as evidence that consumers are informed about efficiency issues. DOE is aware that there is a segment of the consumer market that responds to the information implicit in the ENERGY STAR certification. This was confirmed in a recent paper from the National Bureau of Economic Research that examined how consumers respond to ENERGY STAR certification in the U.S. refrigerator market,[7] but the study also found that ''a non-negligible fraction of consumers also appears to neither value the certification nor consider electricity costs in their purchase decisions.'' While the reasons for this are not entirely clear, difficulties in processing information in purchase decision-making may be a factor.

Mercatus Center stated that the proposed rule may yield economic inefficiencies as it treats dissimilar consumers as similar. It stated that manufacturers respond to the heterogeneity of consumers by offering a wide variety of products, and forcing all residential dishwashers to include energy-saving technology can generate an excess of costs over benefits (*e.g.,* for buyers who only use their dishwashers

[7] Houde, Sebastien. 2014. How Consumers Respond to Environmental Certification and the Value of Energy Information. National Bureau of Economic Research Working Paper No. 20019. *http://www.nber.org/papers/w20019.*

a few times a month). (Mercatus Center, No. 11 at p. 9)

DOE acknowledges that for some consumers the cost of purchasing a residential dishwasher that meets the proposed standards exceeds the operating cost savings from a more efficient dishwasher. In issuing this final rule, DOE considered this burden in the context of the full range of benefits and burdens associated with different standard levels and determined not to issue amended standards for residential dishwashers.

IV. Methodology and Revisions to the Analyses Employed in the 2014 Proposed Rule

This section addresses the analyses DOE has performed for this rulemaking with regard to residential dishwashers. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the potential standards levels considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=106*. Additionally, DOE used output from the latest version of the Energy Information Administration's (EIA's) *Annual Energy Outlook* (*AEO*) for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of residential dishwashers. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

In the 2014 NOPR market analysis and technology assessment, DOE identified 16 technology options that would be expected to improve the efficiency of residential dishwashers, as measured by the DOE test procedure, shown in Table IV.1. 79 FR 76142, 76151 (Dec. 19, 2014).

TABLE IV.1—2014 NOPR TECHNOLOGY OPTIONS

1. Condensation drying.
2. Control strategies.
3. Fan/jet drying.
4. Flow-through heating.
5. Improved fill control.
6. Improved food filter.
7. Improved motor efficiency.
8. Improved spray-arm geometry.
9. Increased insulation.
10. Low-standby-loss electronic controls.
11. Microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls.
12. Modified sump geometry, with and without dual pumps.
13. Reduced inlet-water temperature.
14. Supercritical carbon dioxide washing.
15. Ultrasonic washing.
16. Variable washing pressures and flow rates.

In the 2014 NOPR, DOE requested feedback from manufacturers on its NOPR analyses. After publishing the 2014 NOPR, DOE also conducted manufacturer interviews to discuss the possible design pathways to improve dishwasher efficiencies. From these conversations and additional research, DOE identified desiccant drying as an additional technology option for improving dishwasher efficiency. Along with desiccant drying, all of the technology options identified in the 2014 NOPR were considered in this final rule analysis.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further. 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

In the 2014 NOPR screening analysis, DOE removed three technology options from further consideration: Reduced inlet-water temperature, supercritical carbon dioxide washing, and ultrasonic washing. 79 FR 76142, 76152 (Dec. 19, 2014).

In response to the 2014 NOPR, AHAM commented that DOE did not seek updated information from manufacturers on technology options, resulting in analyzing technology options that should have been removed in the screening analysis. (AHAM, No. 21 at p. 6)

DOE received no additional comments, either in response to the 2014 NOPR or in additional manufacturer interviews, regarding technology options identified in the 2014 NOPR that would not meet the screening criteria. However, DOE is screening out an additional design

option for the final rule analysis, described below.

Desiccant Drying

Desiccant drying relies on a material, such as zeolite, to adsorb moisture to aid in the drying process and reduce drying energy consumption. Certain European dishwashers currently incorporate this technology option; however, DOE is unaware of any dishwashers available in the United States that use desiccant drying. DOE has screened out desiccant drying from further consideration because it would not be practicable to manufacture on the scale necessary for the residential dishwasher market.

2. Remaining Technologies

Through a review of each technology, DOE concludes that all of the other identified technologies listed in section IV.A of this final rule met all four screening criteria to be examined further as design options in DOE's final rule analysis. In summary, DOE retained the following technology options as shown in Table IV.2:

TABLE IV.2—REMAINING FINAL RULE TECHNOLOGY OPTIONS

1. Condensation drying.
2. Control strategies.
3. Fan/jet drying.
4. Flow-through heating.
5. Improved fill control.
6. Improved food filter.
7. Improved motor efficiency.
8. Improved spray-arm geometry.
9. Increased insulation.
10. Low-standby-loss electronic controls.
11. Microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls.
12. Modified sump geometry, with and without dual pumps
13. Variable washing pressures and flow rates.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the final rule TSD.

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer production cost (MPC) and improved residential dishwasher efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option, (2) efficiency level, or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline product to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products. The efficiency ranges from that of the least-efficient residential dishwasher sold today (*i.e.* the baseline) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the MPC; this relationship is referred to as a cost-efficiency curve. In the 2014 NOPR, DOE used a hybrid approach of the three methods to develop the relationship between MPC and residential dishwasher efficiency because it is difficult to assign a specific energy or water savings to a particular design option. 79 FR 76142, 76152 (Dec. 19, 2014).

1. Efficiency Levels

In the 2014 NOPR, DOE analyzed the efficiency levels shown in Table IV.3 and Table IV.4. 79 FR 76142, 76153–76154 (Dec. 19, 2014).

TABLE IV.3—2014 NOPR EFFICIENCY LEVELS—STANDARD PRODUCT CLASS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
0—Baseline	307	5.00
1	295	4.25
2	280	3.50
3	234	3.10
4—Max-Tech	180	2.22

TABLE IV.4—2014 NOPR EFFICIENCY LEVELS—COMPACT PRODUCT CLASS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
0—Baseline	222	3.50
1	203	3.10
2—Max-Tech	141	2.00

China suggested that DOE use international units of measure, rather than gallons, for the convenience of World Trade Organization (WTO) member states. (China, No. 25 at p. 3) DOE proposes to maintain water consumption specifications for each efficiency level in gallons per cycle to maintain consistency with current product ratings and consumer familiarity. The conversion from gallons to an international unit, such as liters, is a simple calculation and would not represent a significant burden to WTO member states.

a. Data Sources

DOE used information in its Compliance Certification Database [8] as one data source for developing the efficiency levels in the 2014 NOPR. 79 FR 76142, 76153–76154 (Dec. 19, 2014). As described in chapter 5 of the NOPR TSD, DOE also relied on test data gathered using the ENERGY STAR *Test Method for Determining Residential Dishwasher Cleaning Performance* (ENERGY STAR Cleaning Performance Test Method) to determine Efficiency Level 3 for standard residential dishwashers.

AHAM observed that the NOPR analysis incorporated data accessed from DOE's Compliance Certification Database as of May 22, 2014, which included some outdated models that had since been removed from the market. (AHAM, No. 21 at p. 6) Energy Solutions asked DOE to review data more recent than May 2014 to see where newer models are rated. (Energy Solutions, Public Meeting Transcript, No. 10 at p. 39) [9]

In developing its rulemaking proposals, DOE strives to use the most recent data available at the time it conducts its analyses. DOE therefore has updated the efficiency levels analyzed in this final rule to reflect current product availability, specifically for the max-tech efficiency level for both product classes. DOE notes that the certification for the model at the max-tech level for the standard product class in the 2014 NOPR analysis has since been withdrawn. At the time of the final rule analysis, DOE found that the maximum available efficiency of products listed in the Compliance Certification Database and available on the market with a typical dishwasher configuration (*i.e.,* built-in and typical product width) for the standard product class was a product with rated annual energy use of 225 kWh/year and water consumption of 2.4 gal/cycle. In addition, the maximum available efficiency of residential dishwashers listed in the compact product class was 130 kWh/year and 1.7 gal/cycle. For residential dishwashers, DOE considers the maximum available efficiency as the max-tech efficiency because DOE has observed all design options that it has identified for improving dishwasher efficiency in units currently on the market. DOE also observed that fewer residential dishwashers in the standard product class are available on the market at the energy and water consumption values for Efficiency Level 3 as defined in the 2014 NOPR than existed at the time the 2014 NOPR was issued. Accordingly, DOE has revised the energy and water consumption values that define Efficiency Level 3 for the standard product class, as described in greater detail in section IV.C.1 of this final rule.

The CA IOUs were concerned that in the 2014 NOPR, DOE presented data from testing conducted in support of the 2012 Direct Final Rule. They commented that tested models should be ones that are representative of models meeting the current standard and reasonably representative of the market. (CA IOUs, No. 23 at p. 2) AHAM noted that DOE conducted testing and teardowns on a limited sample of models, some of which were outdated or had been removed from the market. (AHAM, No. 21 at p. 6)

All test data presented in the 2014 NOPR TSD were from testing conducted either in support of developing the ENERGY STAR Cleaning Performance Test Method or specifically for the 2014 NOPR analysis, and were included in the analyses for the 2014 NOPR and this final rule analysis only if the unit under test met the current dishwasher energy conservation standards. DOE did not conduct additional testing for the final rule analysis, but, as described earlier in this section, it has revised the efficiency levels used in the analysis to better reflect the current residential dishwasher market. Additionally, in manufacturer interviews conducted after publishing the 2014 NOPR, DOE confirmed that the design options incorporated in its test units are representative of the design options included in products currently on the market and of the design options manufacturers would likely use to achieve higher efficiencies. Accordingly, DOE determined that its test data are representative of the current dishwasher market.

b. Consumer Utility

As described in chapter 5 of the NOPR TSD, DOE identified Efficiency Level 3 for the standard product class in the 2014 NOPR as the most efficient level that would maintain product cleaning performance. DOE based this determination on cleaning performance data from the ENERGY STAR Cleaning Performance Test Method, which showed that cleaning performance begins to drop off at energy consumptions and water consumptions below Efficiency Level 3. DOE received multiple comments from interested parties on this issue.

The Joint Commenters emphasized that dishwasher performance should be maintained with new standard levels for consumers to achieve actual energy and water savings, because otherwise consumers may select cycles other than the normal cycle. The Joint Commenters urged DOE to evaluate any additional information beyond cleaning performance, including drying performance and cycle time, provided by manufacturers to ensure that performance can be maintained. (Joint Commenters, No. 22 at p. 2)

AHAM objected to the use of the ENERGY STAR Cleaning Performance Test Method to evaluate performance at the proposed efficiency levels due to AHAM's evaluation of the repeatability and reproducibility of that test procedure. (AHAM, Public Meeting Transcript, No. 10 at p. 20; AHAM, No. 21 at p. 13) According to AHAM, its round robin testing conducted during the development of the ENERGY STAR Cleaning Performance Test Method demonstrated that the test procedure has a maximum standard deviation of 6.76 when using AHAM scoring, albeit on models that did not meet the efficiency levels proposed in the 2014 NOPR. AHAM also stated that it believes that the standard deviation will likely increase as the stringency of the standard levels increases. Furthermore, AHAM and GE commented that DOE's proposed standard level could just as likely negatively impact performance as be neutral, specifically noting that Efficiency Level 3 performance may overlap with Efficiency Level 4 performance. (AHAM, No. 21 at pp. 9–10; GE, No. 26 at pp. 3–4) BSH noted its internal testing found that the ENERGY STAR Cleaning Performance Test Method is repeatable within a single laboratory, but that variability is introduced with tests at different test facilities. (BSH, Public Meeting Transcript, No. 10 at pp. 47–48)

AHAM and GE also commented that DOE did not address dishwasher attributes other than cleaning (*e.g.,* cycle time, drying performance, and noise levels) which potentially impact dishwasher performance and utility. (AHAM, No. 21 at pp. 6–7; GE, No. 26 at pp. 2–3) AHAM expressed concern

[8] DOE's Compliance Certification Database is accessible at *http://www.regulations.doe.gov/certification-data/*.

[9] A notation in the form ''Energy Solutions, Public Meeting Transcript, No. 10 at p. 39'' identifies an oral comment that DOE received during the February 5, 2015, residential dishwasher energy conservation standards NOPR public meeting. Oral comments were recorded in the public meeting transcript and are available in the residential dishwasher energy conservation standards rulemaking docket (Docket No. EERE–2014–BT–STD–0021). This particular notation refers to a comment: (1) Made by Energy Solutions during the public meeting; (2) recorded in document number 10, which is the public meeting transcript that is filed in the docket of this energy conservation standards rulemaking; and (3) which appears on page 39 of document number 10.

that DOE had made incorrect assumptions about the mass consumer appeal of the few products on the market (or once on the market) that meet Efficiency Level 3, and commented that energy and water savings for products currently available are more likely to come at the expense of performance and features than in the past. AHAM noted the small number of models available that meet the proposed levels as compared to its estimates of approximately 667 standard models and 54 compact models on the market at the time of its comment. (AHAM, No. 21 at pp. 6–7, 10)

AHAM stated that water heating is the biggest contributor to dishwasher energy use regardless of the manufacturer, and that manufacturers may be forced to reduce water heating in an effort to comply with the proposed standards, putting performance at risk. (AHAM, No. 21 at p. 8) GE commented that DOE's data from the 2014 NOPR show that performance may begin to degrade at the ENERGY STAR levels in effect at the time of the 2014 NOPR analysis (295 kWh/year and 4.25 gal/cycle). (GE, No. 26 at p. 10)

AHAM and BSH commented that if a portion of a dishwasher cycle changes to save energy, some other aspect must also change to compensate, for example, increasing cycle times. (AHAM, No. 21 at pp. 7–8; BSH, Public Meeting Transcript, No. 10 at pp. 53–55) AHAM stated that data it collected from manufacturers comprising over 90 percent of the market show that as energy use decreases, cycle time (including drying time) increases. According to AHAM, these data indicate that the shipment-weighted average cycle time increases by 12 percent for products meeting Efficiency Level 2 compared to products at the baseline. AHAM further stated that the shipment-weighted average cycle time increases by 37 percent for products meeting Efficiency Level 3 compared to products at the baseline (based on the few models meeting Efficiency Level 3 in the AHAM data set). AHAM commented that this increase in cycle time is likely to be unacceptable to consumers. Finally, AHAM noted that DOE had not shown why it determined that cycle times would be acceptable at Efficiency Level 3 but not at Efficiency Level 4. (AHAM, No. 21 at pp. 7–8) GE stated that standards at Efficiency Level 3 would drive cycle time to greater than 3 hours. According to GE, a survey of 11,000 dishwasher owners showed that cycle time is one of the four major sources of dissatisfaction with these products, the others being odor, rinsing performance, and drying performance. (GE, No. 26 at pp. 3–4)

AHAM stated that in addition to using all or most of the technology options identified in the 2014 NOPR, manufacturers will be required to apply significant innovation at increased cost to meet the proposed standards. AHAM commented that to offset that cost, manufacturers will be forced to make trade-offs, potentially causing loss of product utility. (AHAM, No. 21 at pp. 10–11)

GE believes there would be a compression of the market if standards were adopted at Efficiency Level 3, forcing manufacturers to add cost to increase efficiency rather than increase consumer utility. GE stated as an example that a manufacturer may not be able to invest in sound performance or enhanced rack designs in value-priced models, resulting in reduced consumer utility at lower price points. (GE, No. 26 at p. 4)

Because of the extensive response from interested parties on potential utility concerns at the standard levels proposed in the 2014 NOPR for the standard product class, and at the request of multiple interested parties, DOE conducted additional manufacturer interviews after the 2014 NOPR to further assess the potential utility impacts at varying dishwasher efficiencies.

Information gathered during the manufacturer interviews suggests that some aspect of dishwasher performance would be compromised in order to maintain cleaning performance at the Efficiency Level 3 considered in the 2014 NOPR. As mentioned in the comments from interested parties, manufacturers generally identified drying performance and cycle times as the parameters most likely to be affected at that efficiency level.

During manufacturer interviews, DOE also requested information on how much the energy or water consumption would need to increase from the previous Efficiency Level 3 to maintain acceptable performance. Manufacturers generally indicated that by using all available design options to improve efficiency, they would likely be able to maintain performance with a maximum energy consumption between 250 and 260 kWh/year. With the additional energy consumption, manufacturers suggested that dishwasher cycles would be able to maintain sufficiently high wash and rinse temperatures to result in good cleaning and drying performance. Based on this feedback, DOE adjusted the energy consumption for Efficiency Level 3 in this final rule analysis to 255 kWh/year.[10]

Manufacturers also indicated during interviews that the maximum energy consumption limit proposed in the 2014 NOPR was the primary concern at Efficiency Level 3 rather than the water consumption. They stated that they would likely be able to maintain performance with the same water consumption proposed in the 2014 NOPR if it is combined with a higher energy use value. From this feedback, DOE maintained water consumption at 3.1 gal/cycle for Efficiency Level 3.

One major concern noted in the comments from interested parties was the lack of products available at the proposed standards at Efficiency Level 3. In addition to the manufacturer feedback during interviews, DOE notes that its Compliance Certification Database includes 97 models that would meet the revised Efficiency Level 3 out of a total of 789 standard dishwashers.[11] Additionally, 137 certified models meet the energy consumption at revised Efficiency Level 3 and 305 models meet the water consumption at revised Efficiency Level 3. For products that would currently meet only one of the two metrics for Efficiency Level 3, the rated value for the other metric is, on average, 261 kWh/year for models not meeting the energy consumption and 3.3 gal/cycle for products not meeting the water consumption. This suggests that these products would likely be able to meet Efficiency Level 3 with only minor changes.

Following the manufacturer interviews, AHAM and a group of its members gathered additional data regarding cleaning performance and presented the information to DOE in a meeting on July 8, 2015.[12] The AHAM materials focused on two sets of manufacturer testing: One set consisting of a modified DOE sensor heavy soil load tested in dishwashers reprogrammed to match three energy and water use levels (307 kWh/year and 4.1 gal/cycle, 255 kWh/year and 3.1 gal/cycle, and 234 kWh/year and 3.1 gal/cycle); and one set consisting of two

[10] As discussed later in this section, manufacturers provided different views on consumer utility impacts at this efficiency level. AHAM and a group of its members provided public feedback indicating performance concerns at this level, which differed from the information provided to DOE in confidential manufacturer interviews.

[11] Based on products listed as of August 10, 2016.

[12] A summary of the meeting and the materials presented at this meeting are available at *http://www.energy.gov/sites/prod/files/2015/08/f25/AHAM%20Comments_Ex%20Parte%20Memo_July%208%2C%202015_Dishwasher%20Standards_FINAL%20%2800039961%29.pdf.*

dishwashers that were each loaded with ten place settings soiled with a modified ANSI/AHAM Standard DW–1–2010 soil load, with each dishwasher programmed to match two energy and water use levels (307 kWh/year and 5.0 gal/cycle and 234 kWh/year and 3.1 gal/cycle). AHAM presented results from these tests by exhibiting certain load items as they came out of a test unit at the end of the cycle. AHAM also presented compiled consumer feedback on the test load results in which the consumers generally indicated that the test load items from the units set to 307 kWh/year were adequately cleaned (although some had concerns with performance), while the items coming from the units set to 255 kWh/year or 234 kWh/year would be unacceptable for use. Based on these data, AHAM commented that any standards at these lower energy consumption and water consumption levels would result in worse performance than products currently on the market achieve. Accordingly, AHAM stated that amended dishwasher standards should not be more stringent than the upcoming ENERGY STAR level (270 kWh/year and 3.5 gal/cycle). (AHAM, No. 27 at pp. 1–13)

DOE appreciates the additional information on cleaning performance gathered by AHAM and its members. DOE acknowledges that the data may demonstrate utility impacts at Efficiency Level 3 under the test methods utilized by AHAM. In the paragraphs that follow, however, DOE discusses its concerns with AHAM's test methods:

First, DOE notes that the soil loads used for both sets of testing, and in particular the tests conducted with ten soiled place settings, were heavier than the soils typical of 95 percent of consumer loads. The heaviest soil load in appendix C1 requires only 4 soiled place settings, and represents the 5 percent of consumer cycles run with the heaviest soil loads. The majority of consumer use corresponds to the light soil load in appendix C1 (62 percent of cycles), which requires only one soiled place setting with half the soil amount specified in ANSI/AHAM Standard DW–1–2010.

Second, both sets of AHAM tests included additional soils that are more difficult to remove than those specified in appendix C1. For the first set of tests, animal and vegetable fats were applied, and these were the soils that appeared upon visual inspection to remain after the test cycles. For the second set of tests, a significant amount of adhered soil was added to a serving bowl, and cooked-on milk was added to one glass. The soil loads used in appendix C1 and ANSI/AHAM Standard DW–1–2010 were developed to be representative of typical consumer use, so these substitutions resulted in a soiled load that was more difficult to clean than the typical load.

Third, the controls on the four test units were adjusted to obtain certain energy and water responses for each test cycle rather than allowing a soil sensor to determine the appropriate energy and water consumption for the encountered soil load. As described in chapter 5 of the final rule TSD, DOE expects that manufacturers would incorporate soil sensors, among other design options, to achieve Efficiency Level 3. In appendix C1, the light and medium soil loads represent 95 percent of overall dishwasher use. Accordingly, the cycle responses to these soil loads effectively determine the overall energy and water use for a unit, allowing a dishwasher to meet Efficiency Level 3 even if it were to use a relatively high level of energy and water under heavy soil conditions. DOE expects that a load with ten soiled place settings would always trigger a heavier cycle response in a soil-sensing dishwasher that is designed specifically to meet Efficiency Level 3. As a result, DOE concludes that forcing dishwashers to consume less energy and water under the heaviest soil loading conditions than they would likely be designed for would not reflect how actual units in the field would operate for consumers.

In summary, DOE concludes that the results of AHAM's testing do not demonstrate conclusively that residential dishwashers would have unacceptable cleaning performance at the proposed Efficiency Level 3. DOE expects that typical consumer use conditions would be less severe than those used in AHAM's testing, and that actual units in the field would adjust their cycle responses to heavier-than-typical soil loads to obtain better cleaning performance. Further, the information gathered during confidential manufacturer interviews and the 97 certified models that would meet Efficiency Level 3 indicate that performance could be maintained at that efficiency level.

c. Final Rule Efficiency Levels

Based on the information gathered in manufacturer interviews and the Certification Compliance Database, DOE revised the energy consumption associated with Efficiency Level 3 for standard residential dishwashers to 255 kWh/year in this final rule analysis. As described in section IV.C.1.a. of this final rule, DOE also revised the max-tech Efficiency Level 4 for both standard and compact residential dishwashers.

DOE did not receive any comments in response to the Efficiency Level 2 analyzed for standard residential dishwashers in the 2014 NOPR; however, DOE revised the energy consumption at Efficiency Level 2 to 270 kWh/year for this final rule. The energy use and water consumption corresponding to Efficiency Level 2 in the 2014 NOPR were originally selected for analysis in the 2012 Direct Final Rule based on the ENERGY STAR Draft 2 Version 5.0 Dishwashers Specification, released on February 3, 2011.[13] Although these values represent a technologically feasible efficiency level, DOE updated Efficiency Level 2 for this final rule analysis based on the ENERGY STAR Version 6.0 Dishwashers Specification, which became effective on January 29, 2016. This updated specification establishes maximum values of annual energy consumption and per-cycle water consumption of 270 kWh/year and 3.5 gal/cycle, respectively. For consistency with the current ENERGY STAR specification, DOE analyzed Efficiency Level 2 at 270 kWh/year and 3.5 gal/cycle for this final rule.

In summary, Table IV.5 and Table IV.6 present the efficiency levels DOE considered in this final rule analysis.

[13] The draft specification document is available at *https://www.energystar.gov/products/specs/sites/products/files/ES_Draft_2_V5.0_Dishwashers_Specification.pdf.* DOE notes that this level was removed from the Final V5.0 Dishwashers Specification, and subsequent specification versions 5.1 and 5.2.

TABLE IV.5—FINAL RULE EFFICIENCY LEVELS—STANDARD PRODUCT CLASS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
0—Baseline	307	5.00
1	295	4.25
2	270	3.50
3	255	3.10
4—Max-Tech	225	2.4

TABLE IV.6—FINAL RULE EFFICIENCY LEVELS—COMPACT PRODUCT CLASS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
0—Baseline	222	3.50
1	203	3.10
2—Max-Tech	130	1.70

2. Manufacturer Production Cost Estimates

In the 2014 NOPR, DOE developed MPC estimates for products at each efficiency level. To do this, DOE conducted product teardowns and referred to the 2012 Direct Final Rule to determine which design options manufacturers would likely incorporate at each efficiency level. DOE entered information from the teardowns and expected design options into its cost model to determine associated MPC estimates for products incorporating the expected design options at each efficiency level, as described in chapter 5 of the NOPR TSD. Table IV.7 and Table IV.8 present the cost-efficiency relationships developed for the 2014 NOPR. 79 FR 76142, 76155–76156 (Dec. 19, 2014).

TABLE IV.7—2014 NOPR COST-EFFICIENCY RELATIONSHIP FOR STANDARD RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturer production cost (2013$)
0—Baseline	307	5.00	.....
1	295	4.25	9.52
2	280	3.50	36.53
3	234	3.10	74.72
4—Max-Tech	180	2.22	74.72

TABLE IV.8—2014 NOPR COST-EFFICIENCY RELATIONSHIP FOR COMPACT RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturer production cost (2013$)
0—Baseline	222	3.50	.....
1	203	3.10	8.01
2—Max-Tech	141	2.00	21.50

AHAM commented that it is not clear how DOE chose the representative products for the baseline and higher efficiency levels, and that DOE did not use current information obtained directly from the manufacturers in its analysis, leading to an overstated baseline cost (by $45 to $60) and understated costs for the higher efficiency levels. Specifically, AHAM commented that the overall MPC estimate for Efficiency Level 1 was reasonable, but the incremental cost to reach that efficiency level was too low due to the overestimated baseline cost. According to AHAM, the incremental cost between Efficiency Level 1 and Efficiency Level 2 is relatively small, but the change to Efficiency Level 3 would require significant redesign and cost ($55 to $70 beyond Efficiency Level 2). AHAM stated that it was not able to comment on costs required to reach Efficiency Level 4 due to lack of data for that efficiency level. (AHAM, No. 21 at pp. 3, 6, A–4–A–5) GE supported AHAM's claims that DOE overstated the cost of the baseline unit and understated the costs of reaching the higher efficiency levels (including understating the cost of moving from baseline to Efficiency Level 1). GE also stated that Efficiency Level 3 would require

innovative technology and new platform designs, but the NOPR analysis did not account for this invention risk, investment cost, nor the potential loss of product utility. (GE, No. 26 at p. 2)

AHAM stated that it collected data from manufacturers representing over 90 percent of shipments in 2014 in order to evaluate the design options associated with each efficiency level in the 2014 NOPR. According to AHAM, its data show that 92 percent of models that do not reach Efficiency Level 3 already use hydraulic system optimization and temperature sensors, so manufacturers would not be able to use those options to meet more stringent levels. In addition, AHAM stated that its data show that 70 percent of models in its data set already employ the control strategies DOE described for meeting Efficiency Level 4. AHAM commented that all of the incremental changes DOE concluded manufacturers could use to improve dishwasher designs from Efficiency Level 2 to Efficiency Level 3 are already in use in products that do not meet Efficiency Level 3. AHAM suggested that DOE review design options with manufacturers to understand how they would reach each efficiency level and to update the standards analysis. (AHAM, No. 21 at p. 11) GE commented that many of the technology options identified in the 2014 NOPR are not included in products to improve energy efficiency, which has the effect of overstating the cost of the baseline unit. In addition, GE stated that DOE's analysis did not adequately capture either the technology path or the costs to move from Efficiency Level 2 to Efficiency Level 3 because the design options identified for Efficiency Level 3 are either already utilized in products at lower efficiency levels, or would not be considered as an approach to meet Efficiency Level 3. (GE, No. 26 at p. 2)

After publishing the 2014 NOPR, DOE reviewed its MPC estimates for standard residential dishwashers in its interviews with manufacturers. Topics of discussion included the design options that would be used to reach each efficiency level for standard products as well as the costs associated with those design options. DOE also reviewed its cost estimates for other components not directly related to energy and water performance to improve its estimates of the total MPCs for products at each efficiency level.

At the baseline efficiency level, DOE revised its MPC estimate downwards, as recommended in comments from interested parties and supported by the information gained through manufacturer discussions. In the 2014 NOPR, DOE had incorporated representative cost estimates for non-efficiency components such as racks and detergent dispensers. For this final rule analysis, DOE estimated that manufacturers would use the lowest cost option available. DOE also revised its cost estimates for certain components at the baseline efficiency level based on manufacturer feedback. With these revisions, the updated final rule baseline MPC is approximately $55 lower than the 2014 NOPR estimate. DOE notes that the non-efficiency related component costs that decreased from the 2014 NOPR to this final rule at the baseline level would also decrease at the higher efficiency levels for this final rule because the engineering analysis only considers improvements related to efficiency. As a result, the overall MPCs at each analyzed efficiency level decreased compared to the 2014 NOPR.

For the higher efficiency levels, DOE received manufacturer feedback that it had identified all of the design options manufacturers would use to improve efficiencies. Manufacturers also generally agreed with the design options DOE assumed for Efficiency Level 1 and Efficiency Level 2. However, with the change to the energy consumption at Efficiency Level 2 as described in section IV.C.1.c of this final rule, DOE determined that manufacturers would incorporate a water diverter assembly at Efficiency Level 2. For this final rule analysis, DOE also revised the design options associated with Efficiency Level 3 and Efficiency Level 4. The key changes were shifting condensation drying and an in-sump heater from Efficiency Level 3 to Efficiency Level 4. DOE also determined that incorporating condensation drying at Efficiency Level 4 would require the use of a stainless steel tub. Furthermore, in addition to revising the Efficiency Level 3 and Efficiency Level 4 design options, DOE updated its cost estimates for specific design options at each efficiency level based on manufacturer feedback. This included updating costs for components such as pumps, controls, sensors, and portions of the water system. DOE then adjusted the MPC estimates to reflect 2015 dollars.

There were no substantive changes for the compact dishwasher cost-efficiency relationship other than updating the costs to 2015 dollars. Although the max-tech efficiency level for the compact product class changed compared to the 2014 NOPR analysis, DOE observed that the product offered at the updated max-tech efficiency level appears to have the same design as the previous model, and therefore, DOE expects the MPC to remain unchanged.

Table IV.9 and Table IV.10 provide the updated MPC estimates used for this final rule analysis. Further details of the engineering analysis are provided in chapter 5 of the final rule TSD.

TABLE IV.9—FINAL RULE COST-EFFICIENCY RELATIONSHIP FOR STANDARD RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturer production cost (2015$)
0—Baseline	307	5.00	.....
1	295	4.25	14.76
2	270	3.50	42.20
3	255	3.10	57.61
4—Max-Tech	225	2.40	92.20

TABLE IV.10—FINAL RULE COST-EFFICIENCY RELATIONSHIP FOR COMPACT RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturer production cost (2015$)
0—Baseline	222	3.50	.....
1	203	3.10	8.50
2—Max-Tech	130	1.70	28.11

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* manufacturer markups, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the manufacturer selling price (MSP) estimates derived based on the MPCs determined in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the MIA. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For residential dishwashers, the main parties in the distribution chain are manufacturers, retailers, and consumers. The manufacturer markup converts MPC to MSP. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly-traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes residential dishwashers.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more-efficient products (incremental markups). Incremental markups are coefficients that account for the change in the MSP of higher-efficiency models and the change in the retailer sales price. DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.

AHAM criticized DOE's reliance on the concept of incremental markups, stating that its theory has been disproved and it is in contradiction to empirical evidence. (AHAM, No. 21 at p. 15) In an attachment to AHAM's comment, Shorey Consulting, Inc. (Shorey Consulting) stated that (1) DOE requires a strong form of economic theory, since it is saying that something will happen solely because theory says it should; and (2) an *a priori* resort to economic theory without clear empirical support is highly problematic. Shorey Consulting interviewed a sample of local/regional and national appliance retailers and reported that, with very few exceptions, they were skeptical that percentage margins will be lower in a post-standards situation. Shorey Consulting concluded that DOE needs to abandon the incremental margin approach and revert to the average margin approach that corresponds to actual industry practice. (AHAM, No. 21 at pp. A–10–A–11)

DOE disagrees that the theory behind the concept of incremental markups has been disproved. The concept is based on the theory that an increase in profitability, which is implied by keeping a fixed markup percentage when the product price goes up, is not likely to be viable over time in a business that is reasonably competitive. DOE agrees that empirical data on markup practices would be desirable, but such information is closely held and difficult to obtain.

Regarding the Shorey Consulting interviews with appliance retailers, although the retailers said that they maintain the same percentage margin after amended standards for refrigerators took effect, it is not clear to what extent the wholesale prices of refrigerators actually increased. There is some empirical evidence indicating that prices may not always increase following a new standard [14] [15] [16]. If this happened to be the case following the new refrigerator standard, then there is no reason to suppose that percentage margins changed either.

DOE's analysis necessarily considers a simplified version of the world of appliance retailing; namely, a situation in which other than appliance product offerings, nothing changes in response to amended standards. DOE's analysis assumes that product cost will increase while the other costs remain constant (*i.e.,* no change in labor, material, or operating costs), and asks whether retailers will be able to keep the same markup percentage over time. DOE recognizes that retailers are likely to seek to maintain the same markup percentage on appliances if the price they pay goes up as a result of appliance standards, but DOE contends that over time downward adjustments are likely to occur due to competitive pressures. Some retailers may find that they can gain sales by reducing the markup and maintaining the same per-unit gross profit as they had before the new standard took effect. Additionally, DOE contends that retail pricing is more complicated than a simple percentage margin or markup. Retailers undertake periodic sales and they reduce the prices of older models as new models come out to replace them.[17] [18] [19] Even if retailers maintain the same percent markup when appliance wholesale prices increase as the result of a standard, retailers may respond to competitive pressures and revert to pre-standard average per-unit profits by holding more frequent sales, discounting products under promotion to a greater extent, or discounting older products more quickly. These factors would counteract the higher percentage markup on average, resulting in much the same effect as a lower percentage markup in terms of the prices consumers actually face on average.

DOE acknowledges that its approach to estimating retailer markup practices after amended standards take effect is an approximation of real-world practices that are both complex and varying with business conditions. However, DOE continues to maintain that its assumption that standards do not

[14] Spurlock, C. A. 2013. ''Appliance Efficiency Standards and Price Discrimination.'' Lawrence Berkeley National Laboratory Report LBNL–6283E.

[15] Houde, S. and C. A. Spurlock. 2015. ''Do Energy Efficiency Standards Improve Quality? Evidence from a Revealed Preference Approach.'' Lawrence Berkeley National Laboratory Report LBNL–182701.

[16] Taylor, M., C. A. Spurlock, and H.-C. Yang. 2015. ''Confronting Regulatory Cost and Quality Expectations: An Exploration of Technical Change in Minimum Efficiency Performance Standards.'' *Resources for the Future (RFF)* 15–50.

[17] Bagwell, K. and Riordan, M.H., 1991. ''High and declining prices signal product quality.'' *The American Economic Review,* pp. 224–239.

[18] Betts, E. and Peter, J.M., 1995. ''The strategy of the retail 'sale': Typology, review and synthesis.'' *International Review of Retail, Distribution and Consumer Research,* 5(3), pp. 303–331

[19] Elmaghraby, W. and Keskinocak, P., 2003. ''Dynamic pricing in the presence of inventory considerations: Research overview, current practices, and future directions.'' *Management Science,* 49(10), pp. 1287–1309.

facilitate a sustainable increase in profitability is reasonable.

Chapter 6 of the final rule TSD provides details on DOE's development of markups for residential dishwashers.

E. Energy and Water Use Analysis

The purpose of the energy and water use analysis is to determine the annual energy and water consumption of residential dishwashers at different efficiencies in representative U.S. single-family homes, multi-family, and manufactured housing residences, and to assess the energy and water savings potential of increased residential dishwasher efficiency. The analysis estimates the range of energy and water use of residential dishwashers in the field (*i.e.,* as they are actually used by consumers). The energy and water use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy and water savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE determined a range of annual energy use and per-cycle water consumption of residential dishwashers by multiplying the per-cycle energy use and per-cycle water use of each considered design by the number of cycles per year in a representative sample of U.S. households.

DOE analyzed per-cycle energy consumption based on two components: (1) Water-heating energy, and (2) machine electrical energy use which consists of primarily of energy for motor operation and for drying. The largest component of residential dishwasher energy consumption is water-heating energy use, which is the energy required to heat the inlet water to the temperature for dishwashing. The machine energy consists of the motor energy (for water pumping and food disposal), and drying energy consists of heat to dry cleaned dishes.

DOE estimated the per-cycle water-heating energy consumption based on DOE's residential dishwasher test procedure (which refers to this quantity as ''water energy consumption''). DOE estimated this energy consumption for residential dishwashers that operate with a nominal inlet hot water temperature of 120 °F, the most common situation in U.S. homes. For a residential dishwasher using electrically heated water, the water-heating energy consumption, expressed in kWh per cycle, is equal to the water consumption per cycle times a nominal water heater temperature rise of 70 °F times the specific heat of water (0.0024 kWh per gallon per °F).[20] For a residential dishwasher using gas-heated or oil-heated water, the calculation is the same, but also incorporates a nominal water heater recovery efficiency of 0.80 for gas-fired water heating and 0.78 for oil-fired water heating.[21]

DOE estimated the per-cycle energy use by subtracting the annual energy use associated with standby power from the total annual energy use and dividing the result by the national average number of residential dishwasher cycles per year. DOE used the following data from the engineering analysis for each considered efficiency level: The total annual residential dishwasher energy use and the standby power use.

DOE determined the standby annual energy consumption by multiplying the energy use in standby mode per hour by the hours the residential dishwasher is in standby mode. Standby mode hours are the difference between the number of hours in a year and the active hours. Active hours are equal to the number of residential dishwasher cycles per year multiplied by cycle time, estimated to be 1 hour.[22]

GE noted that DOE indicated that the average dishwasher cycle time is one hour, but AHAM data collected from companies representing over 90 percent of the market indicates that shipment-weighted average cycle time is 1.76 hours. (GE, No. 26 at pp. 2–3) DOE notes that the 1-hour estimate is used in calculating the number of standby and off mode hours to determine the overall energy consumption in those modes. Using 1.76 hours has less than a 2-percent change on the number of hours associated with standby mode or off mode, which already represents a small portion of overall energy consumption. So, DOE expects any change to the energy use associated with the assumed cycle time to be negligible. DOE will consider whether revisions to the cycle time are appropriate when it next revises its test procedure for dishwashers.

DOE estimated the per-cycle water use for each efficiency level in its engineering analysis, as described in chapter 5 of the final rule TSD.

For the NOPR, to estimate the average number of dishwasher cycles per year in a representative sample of U.S. households, DOE relied on a review of survey data it used to develop the 2003 residential dishwasher test procedure amendments. Survey data on consumers' dishwasher usage habits were collected from a number of sources including the EIA's 1997 *Residential Energy Consumption Survey* (*RECS*),[23] several residential dishwasher manufacturers, detergent manufacturers, energy and consumer interest groups, independent researchers, and government agencies. These data yielded an average usage of 215 cycles per year.

AHAM commented that DOE used outdated assumptions on the number of annual dishwasher cycles, including disregard for recent *RECS* data used extensively by DOE in its analyses in favor of the 1997 *RECS* data. (AHAM, No. 21 at p. 15) In an attachment to AHAM's comment, Shorey Consulting stated that DOE should either use the average number of cycles per year from the 2009 *RECS,* or substitute the 2009 *RECS* data for the 1997 data in the Arthur D. Little (ADL) study. (AHAM, No. 21 at p. A–6)

For the final rule, DOE used an average value based on the 2009 *RECS* data rather than the 1997 *RECS* average originally used in the review of survey data in the ADL study.[24] These survey data from the ADL study provided a comprehensive data set of point estimates which the *RECS* data alone do not provide, and are therefore more reflective of dishwasher use nationwide.

Of the more than 12,000 households in the 2009 *RECS,* almost 7,400 have residential dishwashers. For each household using a residential dishwasher, *RECS* provides data on the number of residential dishwasher cycles in the following bins: (1) Less than once per week, (2) once per week, (3) 2–3 times per week, (4) 4–6 times per week, and (5) at least once per day. DOE converted the above information to annual values. DOE amended its characterization of the *RECS* usage bins to eliminate the gaps in the number of annual cycles that had existed in the

[20] The water heater temperature rise of 70 °F assumes an average water heater inlet temperature of 50 °, as specified as the national average in the dishwasher test procedure.

[21] The recovery efficiency indicates how efficient a water heater is at heating water. The DOE test procedure for dishwashers specifies a recovery efficiency of 0.80 for gas-fired water heating and 0.78 for oil-fired water heating, which is representative of gas and oil water heaters currently in the housing stock.

[22] The 1-hour cycle time is an estimate of the typical cycle time for a dishwasher. Actual cycle times vary based on wash selection, load, and model of dishwasher.

[23] RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. For information on RECS, see *www.eia.doe.gov/emeu/recs/.*

[24] Arthur D. Little Inc. *Review of Survey Data to Support Revisions to DOE's Dishwasher Test Procedurehttps://www.regulations.gov/document?D=EERE-2014-BT-STD-0021-0001.*

NOPR analysis.[25] The variability of each bin was accounted for by using triangular distributions for the least and most usage bins and uniform distributions for the three middle bins. This revision changed the weighted average annual cycles from the 171 value used for the NOPR to 204 cycles per year. DOE used the 204 cycles derived from the 2009 *RECS* (rather than the 245 cycles, the value derived from the 1997 *RECS*), and followed the method used to derive the average usage of 215 cycles per year for the DOE test procedure. The substitution of the 2009 *RECS* average changed the average cyles per year from 215 to 207, which DOE used for the final rule. The revisions made for the final rule are described in chapter 7 of the final rule TSD.

To develop the variability of dishwasher use, DOE used the revised bin ranges from the 2009 *RECS.* DOE randomly assigned a specific numerical value from within the appropriate bin to each household in the residential dishwasher sample. Following the method used for the NOPR, DOE then scaled the assigned usage to the revised average from the survey data (207 cycles/year).

Table IV.11 and Table IV.12 show the estimated average annual energy and water use for each efficiency level analyzed for standard and compact residential dishwashers.

TABLE IV.11—STANDARD RESIDENTIAL DISHWASHERS: AVERAGE ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

Efficiency level	Annual energy use				Annual water use (gal/year)
	Water heating * (kWh/year)	Machine + drying (kWh/year)	Standby † (kWh/year)	Total (kWh/year)	
Baseline	177.0	130.0	0.0	307	1,075.0
1	150.4	140.3	4.3	295	913.8
2	123.9	141.8	4.3	270	752.5
3	109.7	141.0	4.3	255	666.5
4	85.0	135.8	4.3	225	516.0

* Shown for the case of electrically heated water.

† Standby annual energy use based on a dishwasher cycle length of one hour. Standby hours = 8,760 hours − (215 cycles × 1 hour) = 8,545 hours. The 215 cycles is used in the test procedure.

TABLE IV.12—COMPACT RESIDENTIAL DISHWASHERS: AVERAGE ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

Efficiency level	Annual energy use				Annual water use (gal/year)
	Water heating * (kWh/year)	Machine + drying (kWh/year)	Standby † (kWh/year)	Total (kWh/year)	
Baseline	123.9	78.4	19.7	222	752.5
1	109.7	78.7	14.5	203	666.5
2	60.2	65.5	4.3	130	365.5

* Shown for the case of electrically heated water.

† Standby annual energy use based on a dishwasher cycle length of 1 hour. Standby hours = 8,760 hours − (215 cycles × 1 hour) = 8,545 hours.

Chapter 7 of the final rule TSD provides details on DOE's energy and water use analysis for residential dishwashers.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for residential dishwashers. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase price. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy and water use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The simple PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the simple PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of dishwashers in the absence of new or amended energy conservation standards. In contrast, the simple PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the 2009 *RECS.* For each sample household, DOE determined the energy and water consumption for residential dishwashers and the appropriate energy price. By developing a representative

[25] For the lowest bin, usage ranges from 1 to 51 cycles per year; for the bin ''once per week,'' usage ranges from 51 to 103 cycles per year; for the bin ''2–3 times per week,'' usage ranges from 104 to 207 cycles per year; for the bin ''4–6 times per week,'' usage ranges from 208 to 364 cycles per year; and for the highest bin, usage ranges from 365 to 730 cycles per year.

sample of households, the analysis captured the variability in energy and water consumption and energy and water prices associated with the use of residential dishwashers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy and water consumption, energy and water prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially-available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and residential dishwasher user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new product in the expected year of compliance with amended standards. For purposes of its analysis, DOE estimated that any amended standards would apply to residential dishwashers manufactured 3 years after the date on which the amended standard is published. (42 U.S.C. 6295(g)(10)(B)) DOE estimated publication of a final rule in 2016. Therefore, for purposes of its analysis, DOE used 2019 as the first year of compliance.

Table IV.13 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final rule TSD and its appendices.

TABLE IV.13—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.
Annual Energy Use	Per cycle energy use multiplied by the total cycles per year. Average number of cycles based on ADL field data and substituting the 2009 *RECS* average cycles for the 1997 *RECS* average cycles in the final rule analysis. Variability: Based on the 2009 *RECS* normalized to the average number of cycles.
Energy Prices	Electricity: Average and marginal prices based on Edison Electric Institute (EEI) 2014. Gas: Based on EIA's Natural Gas Navigator for 2014. Liquified petroleum gas (LPG): Based on EIA's State Energy Consumption, Price and Expenditures Estimates for 2014. Variability: Regional energy prices determined for 27 regions.
Energy Price Trends	Based on *AEO 2016* price projections.
Water Prices	Based on Raftelis Financial Consultants and the American Water Works Association's 2014 Water and Wastewater Rate Survey Variability: By census region.
Water Price Trends	Based on Bureau of Labor Statistics (BLS) 2016 water price index.
Repair and Maintenance Costs.	Assumed no change with efficiency level.
Product Lifetime	Estimated using survey results from *RECS* (1990, 1993, 1997, 2001, 2005, 2009) and the U.S. Census American Housing Survey (2005, 2007, 2009, 2011, 2013), along with historic data on appliance shipments. Variability: Characterized using Weibull probability distributions.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2019.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described above (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. An experience curve analysis focuses on entire industries (often operating globally) and aggregates over many causal factors that may not be well characterized. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level.[26]

For the default price trend, DOE estimated an experience rate for residential dishwashers based on an analysis of long-term historical data. Producer Price Index (PPI) data specific to residential dishwashers were not available. Instead, DOE used PPI data for miscellaneous household appliances (1988 to 2014) from the Bureau of Labor Statistics (BLS). An inflation-adjusted price index was calculated using the implicit price deflators for gross domestic product (GDP) for the same years. This series was then regressed on the cumulative quantity of residential dishwashers produced, based on a

[26] Taylor, M. and Fujita, K.S. *Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique.* LBNL–6195E. Lawrence Berkeley National Laboratory, Berkeley, CA. April 2013. *http://escholarship.org/uc/item/3c8709p4#page-1.*

corresponding series for total shipments of residential dishwashers.

To calculate an experience rate, a least-squares power-law fit was performed on the residential dishwasher price index versus cumulative shipments (including imports). DOE then derived a price factor index, with the price in 2014 equal to 1, to project prices in the year of compliance for amended energy conservation standards in the LCC and PBP analysis, and for the NIA, for each subsequent year through 2048. The index value in each year is a function of the experience rate and the cumulative production through that year. To derive the latter, DOE used projected shipments from the base-case projections made for the NIA (see section IV.G of this final rule). The average annual rate of price decline in the default case is 1.25 percent.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from RS Means to estimate the baseline installation cost for residential dishwashers. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy and Water Consumption

For each sampled household, DOE determined the energy consumption for residential dishwashers at different efficiency levels using the approach described above in section IV.E of this final rule.

4. Energy Prices

For electricity, DOE used marginal and average prices which vary by season, region, and baseline electricity consumption level. DOE estimated these prices using data published with the Edison Electric Institute (EEI), Typical Bill and Average Rates reports for summer and winter 2014. For the residential sector each report provides, for most of the major investor-owned utilities (IOUs) in the country, the total bill assuming household consumption levels of 500, 750, and 1,000 kWh for the billing period. See Chapter 8 of the final rule TSD for more information on the methodology.

To value energy savings from reduced hot water use by the dishwasher, DOE calculated average residential natural gas prices for each of the 27 geographic regions using data from EIA's ''Natural Gas Navigator.'' [27] DOE calculated average residential liquified petroleum gas (LPG) prices for each of the 27 geographic regions using data from EIA's ''State Energy Consumption, Price, and Expenditures Estimates (SEDS).'' [28] DOE calculated average annual regional residential prices by: (1) Estimating an average residential price for each State; and (2) weighting each State by the number of residential consumers. The final rule analysis used the data for 2014.

To estimate energy prices in future years, DOE multiplied the average regional energy prices by a projection of annual change in national-average residential energy price consistent with the projections found on page E–8 in the *AEO 2016,* which has an end year of 2040.[29] To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2030 to 2040.

5. Water and Wastewater Prices

DOE obtained data on water and wastewater prices for 2014 from the Water and Wastewater Rate Survey conducted by Raftelis Financial Consultants [30] and the water utility association, American Water Works Association (AWWA). The survey, which analyzes each industry separately, covers approximately 318 water utilities and 231 wastewater utilities. The survey includes, for each utility, the cost to consumers of purchasing a given volume of water or treating a given volume of wastewater. The data provide a division of the total consumer cost into fixed and volumetric charges. DOE's calculations use only the volumetric charge to calculate water and wastewater prices, because only this charge is affected by a change in water use. Average water and wastewater prices were estimated for each of four census regions. Each *RECS* household was assigned a water and wastewater price depending on its census region location.

DOE included well water prices for well water users using information from the National Groundwater Association. Given the similarity in operating costs between septice systems and public sewer systems and the lack of national data on septic system costs, DOE used the wastewater price calculated for consumers on public sewer systems for users of septic systems. Chapter 8 of the final rule TSD provides details on DOE's energy and water price development.

To estimate the future trend for water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) from 1986 through 2014. DOE used the historic inflation-adjusted water price trend to project water and wastewater prices for residential dishwashers.

AHAM commented that DOE should use water and wastewater prices specific to well water and septic users. (AHAM, No. 21 at p. 16) As mentioned above, DOE included well water prices for well water users. DOE uses the wastewater price calculated for consumers on public sewer systems for users of septic systems. DOE notes that well water and septic users account for a very small fraction of dishwasher consumers.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing dishwasher components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

For the 2014 NOPR, DOE requested information as to whether maintenance and repair costs are a function of efficiency level and product class. DOE did not assume that more efficient residential dishwashers would have greater repair or maintenance costs.

7. Product Lifetime

Because the lifetime of appliances varies depending on utilization and other factors, DOE develops a distribution of lifetimes from which specific values are assigned to the appliances in the household sample. DOE conducted an analysis of residential dishwasher lifetimes in the field based on a combination of shipments data, *RECS* data on the reported age of the residential dishwashers, and dishwasher stock data reported in the U.S. Census Bureau's American Housing Survey.[31] As described in chapter 8 of the NOPR TSD, the analysis yielded an estimate of

[27] Available at: *http://www.eia.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[28] Available at: *http://www.eia.gov/state/seds/seds-data-fuel.cfm?sid=US.*

[29] EIA. *Annual Energy Outlook 2016 with Projections to 2040.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/.* The standards finalized in this rulemaking will take effect before the requirements of the Clean Power Plan (CPP) as modeled in the *AEO 2016* reference case, putting downward pressure on electricity prices relative to the projections in this *AEO 2016* CPP case. Consequently, DOE used the more conservative price projections found in the *AEO 2016* No-CPP case.

[30] AWWA and Raftelis. 2014 Water and Wastewater Rate Survey. (Available at: < *http://www.awwa.org/store/productdetail.aspx?productid=47549801.*)

[31] *http://www.census.gov/programs-surveys/ahs.html.*

mean age for residential dishwashers of approximately 15 years. It also yielded a survival function that DOE incorporated as a probability distribution in its LCC analysis.

AHAM stated that the lifetime of dishwashers should be shorter. It cited two references, an AHAM study conducted in 2011 and a report from 2010.[32] (AHAM, No. 21 at p. 16)

DOE did not receive data from the AHAM study nor is the AHAM 2011 study publically available. DOE reviewed the 2010 report, which analyzed data from a Natural Resources Canada survey,[33] and fit these data to a Weibull function. The authors of the 2010 report found a shape factor similar to DOE's, but their calculation produced a shorter average lifetime (12.6 years vs. 15.4 years estimated by DOE for the 2014 NOPR). The Canadian survey, which took place in 2003, asked the age of the previous dishwasher when replaced. Such replacements presumably would have taken place during the previous 10–15 years, meaning that the dishwashers were produced even before that. The lifetime of products of that vintage is not relevant to the lifetime of dishwashers produced in the near future. Both the technology and consumer utilization patterns have changed. The evidence suggests that the number of cycles per year was higher in the past, which would lead to a shorter lifetime. Moreover, the accuracy of Natural Resources Canada's survey of dishwasher age is highly uncertain because it was performed only once and did not show the variability of dishwasher vintage over time. In contrast, DOE's method of estimating lifetime uses both historical and more recent data that show how the age of the dishwasher stock has changed over time rather than taking a snap shot of a single year.

8. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for residential dishwashers based on consumer financing costs and opportunity cost of funds related to appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [34] (SCF) for 1995, 1998, 2001, 2004, 2007, 2010, and 2013. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.34 percent. See chapter 8 in the final rule TSD for further details on the development of consumer discount rates.

AHAM suggested that DOE should use marginal rather than average consumer cost of capital for its discount rate. It pointed to DOE's assumption that, in the long term, consumers are likely to draw from or add to their collection of debt and asset holdings approximately in proportion to their current holdings when future expenditures are required or future savings accumulate, and stated that DOE does not analyze whether consumers' actual long-term marginal cost of funds approximates their current mix of funds. It stated that in looking at the percentage share of consumer balance sheets made up of different types of assets and debts, DOE does not consider whether consumers could add to any of these asset or liability classes and/or what it would mean in the savings/consumption trade-off to do so. It stated that the percentages obscure the absolute magnitude of the amounts available to consumers and the relative ability to generate additional funds from the various sources. It stated that forms of consumer debt such as credit card, other installment loan, or other residential loan should be considered as the only marginal source of funds. It stated that the weighted average real cost of credit card, other installment loan, other residential loan, and other line of credit, which would be 10–12 percent depending on income group, would provide a more accurate estimate of the marginal cost of capital to consumers. (AHAM, No. 21 at pp. A–11–12)

DOE notes that several stakeholders have suggested the use of a marginal discount rate in the LCC analysis, defined as the interest rate applicable to the specific method of financing an appliance purchase. Generally, this is assumed to be the interest rate on credit card purchases. For the reasons explained in the following paragraph, DOE does not use a marginal discount rate in the LCC analysis.

The LCC analysis estimates the net present value of the financial impacts of a given standard level over the lifetime of the product (*i.e.,* 30 years) assuming the standard-compliant product has already been installed. The appropriate discount rate in this context is the consumer's opportunity cost of increased spending today on a more efficient product with a return in the form of reduced operating costs in the future. The opportunity cost of an investment is the return a consumer could make on that upfront incremental cost by applying it to another investment option. For example, a consumer could pay for an appliance with cash, thereby forgoing potential earnings arising from interest or forgoing the opportunity to pay off existing debt. Alternatively, a consumer could take on debt by using credit to either pay for the purchase of the more efficient appliance, or could put that credit towards an alternative investment option. If a consumer pays for the incremental up-front cost of a more efficient appliance using such debt, they will face the interest rate relevant for that purchase for however long the principal remains in that line of credit. However, the consumer will receive a stream of future benefits in the form of energy expenditure savings that they could either put towards paying off that or other debts, or towards assets, depending on the restrictions they face in their debt payment requirements and the relative size of the interest rates on their debts and assets.

Consumers, however, do not tend to shift all of their funds to assets with the highest interest rate, nor away from debt types with the highest interest rate. Examination of many years of data from the SCF [35] suggests that, at the time of each survey, the vast majority of households held multiple types of debt

[32] Welch, Cory and Brad Rogers, 2010. *Estimating the Remaining Useful Lifetime of Residential Appliances.* American Council on Energy Efficient Economy Summer Study on Energy Efficiency in Buildings. *http://aceee.org/files/proceedings/2010/data/papers/1977.pdf.*

[33] Natural Resources Canada, Office of Energy Efficiency. 2003. ''Survey of Household Energy Use (SHEU), Detailed Statistical Report.'' *http://oee.nrcan.gc.ca/publications/statistics/sheu03/pdf/sheu03.pdf.*

[34] The Federal Reserve Board, Survey of Consumer Finances 1989, 1992, 1995, 1998, 2001, 2004, 2007, 2010, 2013. *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[35] Board of Governors of the Federal Reserve System (1995, 1998, 2001, 2004, 2007, 2010, 2013). ''Survey of Consumer Finances.'' Retrieved August, 2015, from *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

and/or assets. This tendency is observed across numerous cross-sections of the population, such as income groups, geographic locations, and age of household head. This is because consumers hold a portfolio of debts and assets for a reason. Different credit and asset options reflect differing levels of risk, availability, or other factors.

When assessing the net present value of an investment in energy efficiency, the marginal interest rate alone (assuming it were the interest rate on the credit card used to make the purchase, for example) would only be the relevant discount rate if either: (1) The consumer were restricted from rebalancing debt and asset holdings (by redistributing debt and assets based on the relative interest rates available) over the entire time period modeled in the LCC analysis; or (2) the risk associated with an investment in energy efficiency was at a level commensurate with that reflected by credit card interest rates (*i.e.,* that the risk premium required for an investment in energy efficiency was very high). Below each of these points is addressed in turn:

(1) In reference to (1), above, the following provides quantitative justification for the assertion that even if an appliance is purchased with a credit card, few people are likely to keep that purchase on their credit card, thereby paying 20 percent interest on the purchase throughout the product lifetime, while only paying off that purchase with the operating cost savings realized from the more efficient product. The U.S. Bureau of Economic Analysis (BEA) tracks ''non-mortgage interest paid by households.'' [36] Non-mortgage interest paid by households peaked in the recession, reflecting the fact that it was harder for people to pay down credit cards during that time, then returned to more or less flat pre-recession levels thereafter. The fact that interest payments have this flat trend over a long-term time horizon, even while people are using credit cards to make purchases more and more frequently,[37] implies that credit card debt itself is not increasing on average, and therefore people must be paying off those credit card purchases and rebalancing their portfolio of debt and assets over time.

In addition, a Federal Reserve report addressing consumer credit card use and payment behavior summarizes a 1999–2000 survey, revealing, that among bank-type credit card users,[38] a substantial share of consumers (about two-thirds) regularly pay any and all outstanding credit card balance in full, and a vast majority of the remaining one-third pay more than the minimum payment due.[39] Of those that only pay the minimum payment due, most do not continue incurring additional debt on that credit card.

(2) With respect to a reasonable risk premium applicable to an investment in energy efficiency, DOE notes that there is some uncertainty surrounding returns to an energy efficiency investment (*e.g.,* fluctuations in energy prices). While there is limited data available on the risk associated with specific types of energy efficiency investments, Mills *et al.* (2006) [40] present results from an analysis demonstrating that the risk associated with the returns from investing in an ENERGY STAR Building are in line with that of long-term government bonds (*i.e.,* quite low). There is no reason to assume that the risk premium required for an investment in energy efficiency should be particularly high, and certainly not high enough to justify a required rate of return at a level commensurate with a credit card interest rate.

DOE concludes that the best proxy for the appropriate discount rate to assess the value of an investment in a higher efficiency product in the context of the LCC analysis is the weighted average interest rate from the portfolio of debts and assets held by that household. This value best reflects the opportunity cost of the upfront investment in efficiency to that individual household, and assumes that the household will be able to rebalance their portfolio of debt and asset holdings over the long-term timeframe of the LCC analysis.

9. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies in the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

DOE first considered the historical shipments-weighted base-case efficiency trend that was developed for the previous rulemaking for residential dishwashers based on data submitted by AHAM. Based on these historical data, DOE projected a future decline in annual energy use of new dishwashers using an exponential function. This projection was not performed for compact dishwashers, because too few data were available. DOE then conducted an efficiency distribution anslysis for dishwashers based on DOE's Compliance Certification Database for residential dishwashers. The estimated market shares for the no-new-standards case for residential dishwashers are shown in Table IV.14. See chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV.14—RESIDENTIAL DISHWASHER BASE-CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2019

Efficiency level	Standard		Compact	
	Annual energy use (kWh/year)	% of shipments	Annual energy use (kWh/year)	% of shipments
Baseline	307	6.5	222	37.0
1	295	31.2	203	51.9
2	270	51.6	130	11.1

[36] U.S. Bureau of Economic Analysis. (2015). ''Table 7.11. Interest Paid and Received by Sector and Legal Form of Organization.'' Retrieved June, 2016, from *http://www.bea.gov/iTable/iTable.cfm?ReqID=9#reqid=9&step=3&isuri=1&903=288.*

[37] New, C. (2012). ''Cash Dying As Credit Card Payments Predicted To Grow In Volume.'' Retrieved June, 2016, from *http://www.huffingtonpost.com/2012/06/07/credit-card-payments-growth_n_1575417.html.*

[38] Bank-type credit cards (*i.e.,* cards issued by a bank rather than a retail store, gas company, and other such issuers) represent the majority of credit cards in use. Data from the 1990s, presented earlier in this Federal Reserve report, suggest that consumers are approximately twice as likely to carry a balance on a bank-type credit card as compared to on credit cards from other issuers.

[39] Durkin, T. A. (2000). ''Credit Cards: Use and Consumer Attitudes, 1970–2000.'' Federal Reserve Bulletin September 2000: 623–634.

[40] Mills, E., Kromer, S., Weiss, G. and Mathew, P.A., 2006. ''From volatility to value: analysing and managing financial and performance risk in energy savings projects.'' Energy Policy, 34(2), pp. 188–199.

TABLE IV.14—RESIDENTIAL DISHWASHER BASE-CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2019—Continued

Efficiency level	Standard		Compact	
	Annual energy use (kWh/year)	% of shipments	Annual energy use (kWh/year)	% of shipments
3	255	10.2	.....	.....
4	225	0.4	.....	.....

10. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. PBPs are expressed in years. PBPs that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the simple PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The simple PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows.[41] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

New housing projections and residential dishwasher saturation data comprised the two primary inputs for DOE's estimates of new construction shipments. ''New housing'' includes newly-constructed single-family and multi-family units (referred to as ''new housing completions'') and mobile home placements. For new housing completions and mobile home placements, DOE used *AEO 2016* for 2012–2040, and froze new housing starts at the level in 2040.

DOE calibrated the shipments model against historical residential dishwasher shipments. In general, DOE estimated replacements using a product retirement function developed from product lifetime. DOE based the retirement function on a probability distribution for the product lifetime that was developed in the LCC analysis. The shipments model assumes that no units are retired below a minimum product lifetime and that all units are retired before exceeding a maximum product lifetime.

For the final rule, DOE applied price and efficiency elasticity parameters to estimate the effect of new standards on residential dishwasher shipments. DOE estimated the price and efficiency elasticity parameters from a regression analysis that incorporated shipments, purchase price, and efficiency data specific to several residential appliances, including clothes washers, dishwashers, freezers, refrigerators, and room air conditioners, during 1989–2009. Based on evidence that the price elasticity of demand is significantly different over the short run and long run for other consumer goods (*i.e.,* automobiles), A review of the literature shows evidence from numerous markets for durable goods including automobiles, electronics, and refrigerators, suggests long run price elasticity of demand is smaller in magnitude than short run price elasticity of deman; thus a declining trend over time is applied to the estimate of price elasticity for appliances following a price increase subsequent to a standard, therefore, DOE assumed that these elasticities decline over time.[42] [43] [44] DOE estimated shipments in each standards case using the price and efficiency elasticity along with the change in the product price and operating costs between a standards case and the no-new-standards case. See chapter 9 of the final rule TSD for further information.

H. National Impact Analysis

The NIA assesses the NES and the national NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[45] DOE calculates the NES and NPV based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[46] For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of residential dishwashers sold from 2019 through 2048.

DOE evaluates the impacts of new and amended standards by comparing a case without such standards with standards-case projections. The no-new-standards

[41] DOE uses data on manufacturer shipments as a proxy for national sales, since aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[42] Gowrisankaran, Gautam and Marc Rysman. Dynamics of consumer demand for new durable goods. NBER Working Paper 14737, National Bureau of Economic Research, February 2009. *http://www.nber.org/papers/w14737*.

[43] Hymans, Saul H., Gardner Ackley, and F. Thomas Juster. Consumer durable spending: Explanation and prediction. Brookings Papers on Economic Activity, 1970(2):173–206, 1970. *http://www.jstor.org/stable/2534239*.

[44] Parker, Philip and Ramya Neelamegham. Price elasticity dynamics over the product life cycle: A study of consumer durables. Marketing Letters, 8(2):205–216, April 1997. *http://link.springer.com/article/10.1023%2FA%3A1007962520455*.

[45] The NIA accounts for impacts in the 50 States and the U.S. territories.

[46] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.15 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the final rule TSD for further details.

TABLE IV.15—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2019.
Efficiency Trends	No-new-standards case: Efficiency distributions are projected based on historical efficiency data. Standards cases: Use a ''roll-up'' and shift scenario.
Annual Energy/Water Consumption per Unit	Annual weighted-average values are a function of energy/water use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy/Water Cost per Unit	Annual weighted-average values as a function of the annual energy/water consumption per unit and energy/water prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices Trend	*AEO 2016* projections (to 2040) and extrapolation through 2048.
Water Prices Trend	Linear extrapolation of inflation-adjusted historical national water price index.
Energy Site-to-Primary Conversion	A time-series conversion factor based on *AEO 2016.*
Discount Rate	Three and seven percent.
Present Year	2016.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.9 of this final rule describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the first year of the projection period. To project the trend in efficiency for residential dishwashers in the no-new-standards case, DOE assumed that in the base case, shipment-weighted annual energy use will decrease from 278 kWh/year in 2019 to 275 kWh/year in 2048 for standard dishwashers. The approach is further described in chapter 10 of the final rule TSD.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2019). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

For standard dishwasher efficiency after 2019, DOE assumed an efficiency shift scenario in which efficiency increases until reaching a value of 275 kWh/year and then remaining at that level for the remainder of the analysis period. DOE assumed that projected efficiencies for the compact dishwasher product class would remain frozen at the 2019 efficiency level until the end of the analysis period.

2. National Energy and Water Savings

The national energy and water savings analysis involves a comparison of national energy and water consumption of the considered products in each potential standards case (TSL) with consumption in the case with no new or amended energy conservation standards. DOE calculated the national energy and water consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy and water consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2016*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [47] that EIA uses to prepare its *AEO*. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final rule TSD.

[47] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (2009) (Oct. 2009) (Available at: *http://www.eia.gov/forecasts/aeo/nems/overview/appendix.html).*

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this final rule, DOE developed residential dishwasher price trends based on historical PPI data. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2048, which is the end date of the projection period, the average residential dishwasher price is projected to drop 45 percent relative to 2015. DOE's projection of product prices is described in appendix 10C of the final rule TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for residential dishwashers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) A high price decline case based on an exponential fit approach using PPI data for 1991 to 2014; (2) a low price decline case based on an experience rate derived using PPI and shipments data for 2001 to 2014. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the final rule TSD.

The operating cost savings are equal to the energy and water cost savings, which are calculated using the estimated energy and water savings in each year and the projected price of the appropriate form of energy and the projected price of water. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes consistent with the projections found on page E–8 in *AEO 2016,*[48] which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. Water prices and price trends were estimated based on the sources discussed in section IV.F.5. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2016* cases that have higher and lower energy price trends and the NIA results based on these cases are presented in appendix 10D of the final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[49] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

The Associations commented that the Department's own calculations in the ''adverse'' case scenario showed that there is a potential for a net loss under the Proposed Rule and would not satisfy the economic feasibility test required by governing law. (The Associations, No. 17 at p. 4) DOE assumes that the term ''economic feasibility'' used by the Associations refers to the two measures by which a potential standard level is evaluated: Economic justification and technological feasibility. DOE further assumes that with the term ''adverse case scenario,'' the Associations are referring to the LCC results that show the impacts of the LCC analysis: The amount of LCC savings and the percentage of the population that experiences a net cost. DOE evaluates the economic justification of each TSL using efficiency levels with positive LCC savings as the basis for the evaluation. Efficiency levels with negative LCC savings are not analyzed in the NIA and are not considered in the development of potential standards.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this final rule, DOE analyzed the impacts of the considered standard levels on low-income households. Chapter 11 in the final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of residential dishwashers and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to the overall regulatory burden on manufacturers. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and

[48] The standards finalized in this rulemaking will take effect before the requirements of the Clean Power Plan (CPP) as modeled in the *AEO 2016* reference case, putting downward pressure on electricity prices relative to the projections in this AEO 2016 CPP case. Consequently, DOE used the more conservative price projections found in the *AEO 2016* No-CPP case.

[49] OMB. Circular A–4: Regulatory Analysis,'' (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

the various standards cases (TSLs). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the residential dishwasher manufacturing industry based on the market and technology assessment, interviews conducted in support of the 2012 Direct Final Rule, and publicly-available information. This included an analysis of residential dishwasher manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the residential dishwasher manufacturing industry, including company filings of form 10–K from the SEC [50], corporate annual reports, the U.S. Census Bureau's *Economic Census,* and reports from Hoovers.[51] Based on its analysis, DOE used the same industry average financial parameters developed in support of the 2012 Direct Final Rule and the 2014 NOPR.

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes. In performing this analysis, DOE used the financial parameters from the 2012 residential dishwasher energy conservation standards rulemaking, estimates of conversion costs from both the engineering analysis developed for this final rule and manufacturer feedback received in response to the 2014 NOPR, the cost-efficiency curves from the engineering analysis, and the shipment assumptions from the NIA.

In Phase 3 of the MIA, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups include small business manufacturers, if any, and may also include low-volume manufacturers (LVMs), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B, ''Review under the Regulatory Flexibility Act'' and in chapter 12 of the final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2016 (the base year of the analysis), and continuing to 2048. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of residential dishwashers, DOE used a real discount rate of 8.5 percent, derived from industry financials.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information received from industry stakeholders in response to the 2014 NOPR. The GRIM results are presented in section V.B.2 of this final rule. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of residential dishwashers can affect the revenues, gross margins, and cash flow of the industry. DOE estimated the MPCs for standard and compact product classes at the baseline and higher efficiency levels, as described in section IV.C of this final rule. The cost model also disaggregated the MPCs into the cost of materials, labor, overhead, and depreciation. DOE used these MPCs and cost breakdowns for each efficiency level analyzed in the GRIM.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level and product class. Changes in sales volumes and the efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2016 (the base year) to 2048 (the end year of the analysis period). See chapter 9 of the final rule TSD for additional details.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards. Capital conversion costs are investments in property, plant, and

[50] Available online at *www.sec.gov.*

[51] Available online at *http://www.hoovers.com.*

equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

DOE developed two model scenarios to estimate the capital conversion costs required to meet amended energy conservation standards at each TSL. One scenario is based on the capital conversion costs developed for the analysis supporting the 2012 Direct Final Rule, scaled to reflect the new efficiency levels for each product class considered in this final rule. In a data submission to DOE following the publication of the 2014 NOPR, AHAM supported the use of capital conversion cost estimates based on those developed for the 2012 Direct Final Rule for some of the efficiency levels for standard dishwashers considered in this final rule (AHAM, No. 28 at pp. 1–2).[52] Additionally, DOE developed a separate capital conversion cost scenario using the engineering cost model developed for this final rule. For this estimate, DOE identified the design pathways considered in the engineering analysis, estimated the cost of the changes in production equipment to implement each design option, and aggregated these costs to reflect the industry-wide investment using market information about the number of platform and product families currently on the market from each manufacturer.

DOE based product conversion costs related to amended energy conservation standards for dishwashers on the analysis conducted for the 2012 Direct Final Rule, scaled to reflect the new efficiency levels for each product class considered in this final rule. These product coversion costs were used in combination with both above-mentioned capital conversion costs scenarios to estimate total industry conversion costs under each scenario.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this final rule. For additional information on the estimated capital and product conversion costs, see chapter 12 of the final rule TSD.

d. Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead as estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. DOE used the baseline manufacturer markup, 1.24, developed for the 2012 Direct Final Rule, and also used in the 2014 NOPR, for all products when modeling the no-new-standards in the GRIM. This scenario represents the upper bound of industry profitability as manufacturers are able to fully pass on additional production costs due to standards to their customers under this scenario.

Under the preservation of per-unit operating profit markup scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in manufacturer production costs. This scenario represents the lower bound of profitability and a more substantial impact on the residential dishwasher industry as manufacturers accept a lower margin in an attempt to offer price competitive products while maintaining the same level of earnings before interest and tax (EBIT) they saw prior to amended standards.

A comparison of industry financial impacts under the two markup scenarios is presented in section V.B.2.a of this final rule.

3. Discussion of Comments

AHAM, residential dishwasher manufacturers, and other interested parties provided several comments on the potential impact of amended energy conservation standards on manufacturers.

At the 2014 NOPR public meeting, multiple stakeholders expressed concern over the lack of manufacturer input and DOE's use of outdated information for the NOPR analysis. (AHAM, Public Meeting Transcript, No. 10 at pp. 22–23, 98; NRDC, Public Meeting Transcript, No. 10 at p. 85; BSH, Public Meeting Transcript, No. 10 at pp. 95–96; Whirlpool, Public Meeting Transcript, No. 10 at pp. 103–104)

DOE recognizes the importance of interviews with manufacturers, as interviews provide critical data for the analysis of the impacts of potential energy conservation standards. Following the 2014 NOPR public meeting, site visits were conducted with six residential dishwasher manufacturers. Feedback received during these interviews and through public comments has been integrated into the analysis for this final rule.

Regarding DOE's treatment of the cumulative effect of regulatory burdens on residential dishwasher manufacturers, AHAM commented that there has been an increase in DOE's energy efficiency regulatory actions in recent years. According to AHAM, although DOE does attempt to quantify regulatory burden in its analysis, it does not adequately consider the resources and time required to both support DOE with test data and to comply with standards. (AHAM, No. 21 at p. 17)

DOE analyzes cumulative regulatory burdens as part of the MIA. The results of the cumulative regulatory burden analysis on residential dishwasher manufacturers are located in section V.B.2 of this final rule and chapter 12 of the final rule TSD. Additionally, DOE integrates recertification costs associated with industry (third-party) standards compliance that result from amended DOE standards in estimates of industry product conversion costs. Information on product conversion costs can be found in section IV.J.2 of this final rule and chapter 12 of the final rule TSD.

AHAM commented that, in the case of this residential dishwasher rulemaking, the implementation is intended to be at the minimum time between rulemakings allowed by law. AHAM stated that it is

[52] In its data submittal, AHAM did not support the use of capital conversion costs based on the 2012 Direct Final Rule for standard dishwashers associated with an efficiency level of 180 kWh/year and 2.22 gallons/cycle (*i.e.,* the 2014 NOPR max-tech efficiency level). For this final rule, 180 kWh/year has been eliminated as an analyzed efficiency level, and has been replaced by 225 kWh/year. Additionally, in the 2014 NOPR, Effciency Level 2 corresponded to an energy use of 280 kWh/year. AHAM's data submittal supported the use of capital conversion costs based on the 2012 Direct Final Rule for this level. For this final rule, Efficiency Level 2 is 270 kWh/year. DOE interpolated conversion costs for this level using those based on 2012 Direct Final Rule for NOPR Efficiency Level 2 (280 kWh/year) and Efficiency Level 3 (255 kWh/year).

clear from interviews with manufacturers that the cycle time is too short for a full recovery of investments, and that DOE should reconsider the structure of the GRIM to account for future rulemakings and their effects on industry value. (AHAM, No. 21 at p. 17)

In this final rule, DOE is not adopting amended energy conservation standards for residential dishwashers. DOE will conduct a future energy conservation standards rulemaking for residential dishwashers pursuant to 42 U.S.C. 6295(m)(3)(B), which requires that within 3 years of issuing any final determination that existing standards do not need to be amended, DOE shall publish either a notice of determination that amended standards are not needed or a NOPR including new proposed standards. Because it is not known at this time whether DOE will determine in a future rulemaking cycle that it is technologically feasible and economically justified to amend residential dishwashers standards (and if so, to what levels), DOE does not account for future potential amended standards in the GRIM.

Related to the impacts of amended energy conservation standards on industry profitability, AHAM commented that manufacturers will likely need to divert resources ordinarily used for product innovation to standards compliance. Due to minimal consumer payback, AHAM stated that the investments put towards standards compliance will not drive additional purchases, whereas innovation in other areas may have. (AHAM, No. 21 at p. 17)

The effects of investments such as R&D and capital expenditures on manufacturer cash flows due to potential amended residential dishwasher standards are discussed further in section V.B.2.a of this final rule.

AHAM and GE provided comments related to the magnitude of industry conversion costs that would be required for manufacturers of standard residential dishwashers to meet an efficiency level of 234 kWh/year (Efficiency Level 3 in the 2014 NOPR analysis). According to AHAM, a conservative estimate for industry conversion costs to reach 234 kWh/year for standard residential dishwashers is $500 million rather than the $250 million estimated by DOE. (AHAM, No. 21 at p. 15) GE agreed with this estimate and further stated that, at an efficiency level of 234 kWh/year, manufacturers wishing to preserve platforms that are priced at less than $500 would be forced to trade off consumer utility, which would increase the share of the market for other higher price point dishwashers, creating a negative consumer payback. (GE, No. 26 at p. 5)

Following the 2014 NOPR comment period, AHAM submitted additional data related to industry conversion costs. In its submittal, AHAM stated that the 2014 NOPR estimates for industry conversion costs based on the 2012 Direct Final Rule are approximately correct for Efficiency Level 1 (295 kWh/year) and Efficiency Level 2 (280 kWh/year).[53] According to AHAM, however, the cost previously projected for the efficiency level corresponding to 234 kWh/year for standard residential diswashers is appropriate for an alternate efficiency level of 255 kWh/year and 3.1 gallons per cycle, and the estimate for the NOPR efficiency level corresponding to 180 kWh/year is approximately correct for an efficiency level corresponding to 234 kWh/year. AHAM further commented that manufacturers do not believe 180 kWh/year and 2.22 gallons per cycle is practical and that they have no estimates on the costs to achieve it. (AHAM, No. 28 at pp. 1–2)

DOE appreciates the additional feedback provided by AHAM and residential dishwasher manufacturers relating to the magnitude of conversion costs that will be required to reach different standard levels. Based on this and other feedback relating to the efficiency levels analyzed in the 2014 NOPR, DOE has reevaluated its standards-case efficiency levels. Industry's feedback on conversion costs has been incorporated into DOE's new estimates of industry conversion costs for this final rule analysis. Section IV.J.2.c and section V.B.2 of this final rule provide information about DOE's estimates of industry conversion costs resulting from potential amended standards for residential dishwashers. Additional information is included in chapter 12 of the final rule TSD.

4. Manufacturer Interviews

As noted in section IV.J.3 of this final rule, DOE relies on manufacturer interviews to provide critical data for the analyzing the impacts of potential amended energy conservation standards. Following the 2014 NOPR public meeting, discussions were held with six residential dishwasher manufacturers. The key issues discussed during these interviews were: (1) Consumer utility concerns at the standard levels proposed in the 2014 NOPR, and (2) the engineering cost estimates that fed into the 2014 NOPR analysis. These key issues were also raised in public comments from interested parties in response to the 2014 NOPR. Section IV.C.1.b and section IV.C.2 of this final rule provide additional discussion describing these key issues and how DOE has addressed them in this final rule analysis.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and mercury (Hg). The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, methane (CH_4) and nitrous oxide (N_2O), as well as the reductions to emissions of all species due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors derived from data in *AEO 2016,* as described in section IV.M of this final rule. Details of the methodology are described in the appendices to chapters 13 and 15 of the final rule TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the Environmental Protection Agency (EPA)—Greenhouse Gas (GHG) Emissions Factors Hub.[54] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the final rule TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas

[53] In the 2014 NOPR, Effciency Level 2 corresponded to an energy use of 280 kwh/year. For this final rule, Efficiency Level 2 is 270 kwh/year.

[54] Available at: *www2.epa.gov/climateleadership/center-corporate-climate-leadership-ghg-emission-factors-hub.*

by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[55] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

Because the on-site operation of gas-fired and oil-fired water heaters that provide hot water to residential dishwashers requires combustion of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to potential standards. Site emissions of the above gases were estimated using emissions intensity factors from an EPA publication.[56]

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2016* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of the end of February 2016. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[57] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (Aug. 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,[58] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[59] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[60] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.[61] *AEO 2016* incorporates implementation of CSAPR.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2016* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CSAPR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. [62] Therefore, DOE believes that energy conservation standards that decrease electricity generation will generally reduce SO_2 emissions in 2016 and beyond.

CSAPR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[63] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CSAPR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this final rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE

[55] Intergovernmental Panel on Climate Change. Anthropogenic and Natural Radiative Forcing. In *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.* Chapter 8. 2013. Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex, and P.M. Midgley, Editors. Cambridge University Press: Cambridge, United Kingdom and New York, NY, USA.

[56] EPA. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emission-factors.*

[57] See *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, 550 F.3d 1176 (D.C. Cir. 2008).

[58] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

[59] *See EPA* v. *EME Homer City Generation, L.P.* 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[60] *See EME Homer City Generation, L.P.* v. *EPA,* Order *(D.C. Cir. filed October 23, 2014)* (*No. 11–1302).*

[61] On July 28, 2015, the D.C. Circuit issued its opinion regarding the remaining issues raised with respect to CSAPR that were remanded by the Supreme Court. The D.C. Circuit largely upheld CSAPR but remanded to EPA without *vacatur* certain States' emission budgets for reconsideration. *EME Homer City Generation, LP* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

[62] DOE notes that on June 29, 2015, the U.S. Supreme Court ruled that the EPA erred when the agency concluded that cost did not need to be considered in the finding that regulation of hazardous air pollutants from coal- and oil-fired electric utility steam generating units (EGUs) is appropriate and necessary under section 112 of the Clean Air Act (CAA). *Michigan* v. *EPA,* 135 S. Ct. 2699 (2015). The Supreme Court did not vacate the MATS rule, and DOE has tentatively determined that the Court's decision on the MATS rule does not change the assumptions regarding the impact of energy conservation standards on SO_2 emissions. Further, the Court's decision does not change the impact of the energy conservation standards on mercury emissions. The EPA, in response to the U.S. Supreme Court's direction, has now considered cost in evaluating whether it is appropriate and necessary to regulate coal- and oil-fired EGUs under the CAA. EPA concluded in its final supplemental finding that a consideration of cost does not alter the EPA's previous determination that regulation of hazardous air pollutants, including mercury, from coal- and oil-fired EGUs, is appropriate and necessary. 79 FR 24420 (April 25, 2016). The MATS rule remains in effect, but litigation is pending in the D.C. Circuit Court of Appeals over EPA's final supplemental finding MATS rule.

[63] CSAPR also applies to NO_X and it supersedes the regulation of NO_X under CAIR.

estimated mercury emissions reduction using emissions factors based on *AEO 2016,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this final rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. To make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this analysis.

1. Social Cost of Carbon

The social cost of carbon (SCC) is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council [64] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

[64] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* 2009. National Academies Press: Washington, DC.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[65] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.16 presents the values in the 2010 interagency group report,[66] which is reproduced in appendix 14A of the final rule TSD.

TABLE IV.16—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[67] Table IV.17 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 through 2050. The full set of annual SCC estimates from 2010 through 2050 is reported in appendix 14B of the final rule TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.17—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these

[65] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[66] United States Government–Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* February 2010. *https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf.*

[67] United States Government–Interagency Working Group on Social Cost of Carbon. *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* May 2013. Revised July 2015. *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf.*

effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[68]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015) adjusted to 2015$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.4, $40.6, $63.2, and $118 per metric ton avoided (values expressed in 2015$). DOE derived values after 2050 based on the trend in 2010–2050 in each of the four cases in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

Mercatus Center and The Associations criticized DOE's use and application of SCC estimates. Mercatus Center stated that the SCC estimates are experimental and tentative, and not necessarily a valid guide for policy decisions; and the NOPR calculations overstate the net benefits for Americans by counting worldwide benefits. Mercatus Center added that in many of the NOPR calculations, the SCC estimates are the difference between positive and negative benefit-cost figures. The Associations objected to DOE's continued use of the SCC in the cost-benefit analysis and stated that the SCC calculation should not be used in any rulemaking until it undergoes a more rigorous notice, review, and comment process. (Mercatus Center, No. 11 at p. 8–9, The Associations, No. 17 at p. 3)

In conducting the interagency process that developed the SCC values, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. Key uncertainties and model differences transparently and consistently inform the range of SCC estimates. However, the three integrated assessment models used to estimate the SCC are frequently cited in the peer-reviewed literature and were used in the last assessment of the IPCC. In addition, new versions of the models that were used to estimate revised SCC values in this final rule were published in peer-reviewed literature (see appendix 14B of the final rule TSD for discussion). Although uncertainties remain, the revised estimates used in this final rule are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, using the best science available, and with input from the public.

DOE's analysis estimates both global and domestic benefits of CO_2 emissions reductions. Following the recommendation of the interagency working group, the 2014 NOPR and this final rule focus on a global measure of SCC. As discussed in appendix 14A of the final rule TSD, the climate change problem is highly unusual in at least two respects. First, it involves a global externality: Emissions of most GHGs contribute to damages around the world even when they are emitted in the United States. Consequently, to address the global nature of the problem, the SCC must incorporate the full (global) damages caused by GHG emissions. Second, climate change presents a problem that the United States alone cannot solve. Even if the United States were to reduce its GHG emissions to zero, that step would be far from enough to avoid substantial climate change. Other countries would also need to take action to reduce emissions if significant changes in the global climate are to be avoided. Emphasizing the need for a global solution to a global problem, the United States has been actively involved in seeking international agreements to reduce emissions and in encouraging other nations, including emerging major economies, to take significant steps to reduce emissions. When these considerations are taken as a whole, the interagency group concluded that a global measure of the benefits from reducing U.S. emissions is preferable. DOE's approach is consistent with the requirement to weigh the need for national energy conservation, as one of the main reasons for national energy conservation is to contribute to efforts to mitigate the effects of global climate change.

With respect to the comment that the SCC benefits are the difference between positive and negative benefit-cost figures, all of the TSLs considered in this rule have a positive NPV of consumer benefits (*i.e.,* without considering the value of emissions reduction).

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CSAPR.

DOE estimated the monetized value of NO_X emissions reductions electricity generation using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards.[69] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 using discount rates of 3 percent and 7 percent; these values are presented in appendix 14C of the final rule TSD. DOE primarily relied on the low estimates to be conservative.[70] DOE developed values specific to the end-use category for residential dishwashers using a method described in appendix 14C of the final rule TSD. For this analysis DOE used linear interpolation to define values for the years between 2020 and 2025 and between 2025 and 2030; for years beyond 2030 the value is held constant.

DOE estimated the monetized value of NO_X emissions reductions from gas-fired water heaters using benefit per ton

[68] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015 OMB published a detailed summary and formal response to the many comments that were received: this is available at *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

[69] Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See Tables 4A–3, 4A–4, and 4A–5 in the report. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al.,* Order in Pending Case, 577 U.S. (2016). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan.

[70] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits are primarily based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the final rule TSD for citations for the studies mentioned above.)

estimates from the EPA's ''Technical Support Document Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 17 Sectors.'' [71] Although none of the sectors refers specifically to residential and commercial buildings, DOE believes that the sector called ''Area sources'' would be a reasonable proxy for residential and commercial buildings. ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Since exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small dispersed sources like homes and businesses. The EPA Technical Support Document provides high and low estimates for 2016, 2020, 2025, and 2030 at 3- and 7-percent discount rates. As with the benefit per ton estimates for NO_X emissions reductions from electricity generation, DOE primarily relied on the low estimates to be conservative.

DOE multiplied the emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

DOE is evaluating appropriate monetization of reduction in other emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2016.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions consistent with the projection described on page E–8 of *AEO 2016* and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's BLS. BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[72] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (ImSET).[73] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for residential dishwashers. It addresses the TSLs examined by DOE and the projected impacts of each of these levels if adopted as energy conservation standards for residential dishwashers. Additional details regarding DOE's

[71] *www.epa.gov/sites/production/files/2014–10/documents/sourceapportionmentbpttsd.pdf*

[72] See U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *http://www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf.*

[73] Livingston, O. V., S. R. Bender, M. J. Scott, and R. W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

analyses are contained in the final rule TSD supporting this final rule.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of two TSLs for residential dishwashers.[74] These TSLs were developed by combining specific efficiency levels that have positive LCC savings for each of the product classes analyzed by DOE.[75] DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the final rule TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for residential dishwashers. TSL 1 represents the only efficiency level for standard-size residential dishwashers with positive LCC savings and the lowest efficiency level above the baseline for compact residential dishwashers. TSL 2 represents the maximum technologically feasible (''max-tech'') energy efficiency for the compact product class and repeats the efficiency level for the standard-size product class.

TABLE V.1—TRIAL STANDARD LEVELS FOR RESIDENTIAL DISHWASHERS

TSL	Standard			Compact		
	EL	Annual energy use (kWh)	Water use per cycle (gal)	EL	Annual energy use (kWh)	Water use per cycle (gal)
1	3	255	3.10	1	203	3.10
2	3	255	3.10	2	130	1.70

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on residential dishwasher consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy and water use, energy and water prices, energy and water price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline products and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR STANDARD RESIDENTIAL DISHWASHERS

TSL	EL	Average costs (2015$)				Simple payback * years	Average lifetime years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	411	41	481	893	.....	15
	1	432	40	465	896	16.1	15
	2	470	37	428	898	13.5	15
1,2	3	491	35	405	897	12.9	15
	4	539	31	361	900	12.9	15

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

* The Simple Payback represents the number of years to recover incremental installed costs for the households experiencing a net benefit.

[74] Three TSLs were analyzed during the 2014 NOPR phase for the three of four efficiency levels that had positive LCC savings. Efficiency levels with negative LCC savings are not analyzed in the NIA and are not represented in a TSL. Because only one efficiency level for standard-size residential dishwashers (EL 3) had positive LCC savings for the final rule and both efficiency levels for compact residential dishwashers (EL 1 and EL 2) have positive LCC savings, DOE analyzed two TSLs for the final rule, as presented in Table V.1. Each efficiency level for compact residential dishwashers was combined with the one efficiency level for standard residential dishwashers to form two TSLs.

[75] For standard-size residential dishwashers, Efficiency Levels 1, 2, and 4 all had negative average LCC savings, so DOE did not consider them when forming the TSLs. ELs 1, 2, and 4 shifted to negative LCCs due to a number of factors including (1) updates to the engineering analysis (discussed above and in the final rule TSD chapter 5); (2) adjusting to 2015$ from 2014$; (3) an updated base-case efficiency distribution from 2014 to 2016; and (4) using the updated *AEO 2016* from *AEO 2013*.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR STANDARD RESIDENTIAL DISHWASHERS

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2015$)	Percent of consumers that experience net cost (%)
1,2	1	(1.94)	4
	2	(1.07)	25
	3	0.28	58
	4	(3.14)	67

*The savings represent the average LCC for affected consumers.
Parentheses indicate negative (−) values.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR COMPACT RESIDENTIAL DISHWASHERS

TSL	EL	Average Costs (2015$)				Simple payback* (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	445	30	352	798	.....	15
1	1	457	28	323	781	4.8	15
2	2	485	19	213	698	3.3	15

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.
*The Simple Payback represents the number of years to recover incremental installed costs for the households experiencing a net benefit.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR COMPACT RESIDENTIAL DISHWASHERS

TSL	EL	Life-cycle cost savings	
		Average LCC Savings* (2015$)	Percent of consumers that experience net cost (%)
1	1	17	8
2	2	90	12

*The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households. Table V.6 and Table V.7 compare the average LCC savings and PBP at each efficiency level for the consumer subgroup, along with the average LCC savings for the entire consumer sample. The average LCC savings and PBP for low-income households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the subgroup.

TABLE V.6—STANDARD RESIDENTIAL DISHWASHERS: COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2015$)		Simple payback period (years)	
	Low-income households	All households	Low-income households	All households
1,2	(0.70)	0.28	12.9	12.9

Parentheses indicate negative (−) values.

TABLE V.7—COMPACT RESIDENTIAL DISHWASHERS: COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2015$)		Simple payback period (years)	
	Low-income households	All households	Low-income households	All households
1	16	17	4.9	4.8
2	84	90	3.4	3.3

c. Rebuttable Presumption Payback

As discussed in section IV.F.10 of this final rule, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for residential dishwashers. In contrast, the PBPs presented in section IV.F.10 of this final rule were calculated using distributions that reflect the range of energy use in the field.

Table V.8 presents the rebuttable-presumption payback periods for the considered TSLs for residential dishwashers. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.8—RESIDENTIAL DISHWASHERS: REBUTTABLE PBPS

Product class	Trial standard level	
	1	2
Standard (*years*)	7.5	7.5
Compact (*years*)	3.7	2.5

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of residential dishwashers. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables illustrate the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of residential dishwashers, as well as the conversion costs that DOE estimates manufacturers of residential dishwashers would incur at each TSL.

DOE modeled two scenarios using different markup assumptions and two scenarios using different conversion cost assumptions for a total of four different scenarios. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These assumptions correspond to the bounds of a range of market responses that DOE anticipates could occur in the standards case. The tables below depict the financial impacts on manufacturers (represented by changes in INPV) and the conversion costs DOE estimates manufacturers would incur at each TSL. Table V.9 and Table V.10 correspond to the scenarios using scaled estimates of the capital conversion costs from the 2012 Direct Final Rule with the preservation of gross margin markups and the preservation of per-unit operating profit markups respectively. Table V.11 and Table V.12 correspond to the scenarios using estimates of the capital conversion from the current engineering cost model, again with the preservation of gross margin markups and the preservation of per-unit operating profit markups respectively. For a given conversion cost scenario, results corresponding to the preservation of gross margin markups scenario reflect the lower (less severe) bound of impacts whereas the results corresponding to the preservation of per-unit operating profit markups scenario reflect the upper (more severe) bound of impacts.

The INPV results refer to the difference in industry value between the no-new-standards case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2016) through the end of the analysis period (2048). The discussion also notes the difference in cash flow between the no-new-standards case and the standards case in the year before the compliance date of potential amended energy conservation standards. This figure provides an estimate of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—SCALED CAPITAL CONVERSION COSTS FROM THE 2012 DIRECT FINAL RULE WITH THE PRESERVATION OF GROSS MARGIN MARKUPS SCENARIO

	Units	Base case	Trial standard level	
			1	2
INPV	(*2015$ millions*)	527.7	381.3	379.0
Change in INPV	(*2015$ millions*)		−146.3	−148.7
	(%)		−27.7%	−28.2%

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—SCALED CAPITAL CONVERSION COSTS FROM THE 2012 DIRECT FINAL RULE WITH THE PRESERVATION OF GROSS MARGIN MARKUPS SCENARIO—Continued

	Units	Base case	Trial standard level	
			1	2
Product Conversion Costs	(*2015$ millions*)		93.7	94.8
Capital Conversion Costs	(*2015$ millions*)		141.1	143.2
Total Conversion Costs	(*2015$ millions*)		234.8	238.0

TABLE V.10—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—SCALED CAPITAL CONVERSION COSTS FROM THE 2012 DIRECT FINAL RULE WITH THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUPS SCENARIO

	Units	Base case	Trial standard level	
			1	2
INPV	(*2015$ millions*)	527.7	327.0	324.4
Change in INPV	(*2015$ millions*)		−200.7	−203.3
	(*%*)		−38.0%	−38.5%
Product Conversion Costs	(*2015$ millions*)		93.7	94.8
Capital Conversion Costs	(*2015$ millions*)		141.1	143.2
Total Conversion Costs	(*2015$ millions*)		234.8	238.0

TABLE V.11—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—CAPITAL CONVERSION COSTS FROM THE 2016 ENGINEERING COST MODEL WITH THE PRESERVATION OF GROSS MARGIN MARKUPS SCENARIO

	Units	Base case	Trial standard level	
			1	2
INPV	(*2015$ millions*)	527.7	464.7	459.3
Change in INPV	(*2015$ millions*)		−63.0	−68.3
	(*%*)		−11.9%	−13.0%
Product Conversion Costs	(*2015$ millions*)		93.7	94.8
Capital Conversion Costs	(*2015$ millions*)		69.1	74.6
Total Conversion Costs	(*2015$ millions*)		162.8	169.4

TABLE V.12—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—CAPITAL CONVERSION COSTS FROM THE 2016 ENGINEERING COST MODEL WITH THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUPS SCENARIO

	Units	Base case	Trial standard level	
			1	2
INPV	(*2015$ millions*)	527.7	408.2	402.5
Change in INPV	(*2015$ millions*)		−119.5	−125.2
	(*%*)		−22.6%	−23.7%
Product Conversion Costs	(*2015$ millions*)		93.7	94.8
Capital Conversion Costs	(*2015$ millions*)		69.1	74.6
Total Conversion Costs	(*2015$ millions*)		162.8	169.4

Because standard residential dishwashers represent over 99 percent of shipments in the year leading up to potential amended standards, changes to this product class contribute the majority of impacts to INPV across all TSLs analyzed in this rulemaking.

At TSL 1, DOE estimates impacts on INPV to range from −$200.7 million to −$63.0 million, or a change in INPV of −38.0 percent to −11.9 percent. At this level, industry free cash flow is estimated to decrease by as much as 231.9 percent to −$51.9 million, compared to the no-new-standards case value of $39.4 million in the year leading up to the amended energy conservation standards.

At TSL 1, although overall INPV impacts are indicative of impacts on INPV for the standard residential dishwasher industry, DOE estimates impacts on compact residential dishwasher INPV to range from −$8.5 million to −$6.1 million, or a change in INPV of −207.6 percent to −150.4 percent.

At TSL 1, for standard residential dishwashers, DOE expects manufacturers would optimize the hydraulic system, and incorporate electronic controls, multiple spray arms, separate drain and circulation pumps, tub insulation, a soil sensor, improved filters, a temperature sensor, a flow meter, a water diverter assembly, and variable-speed motors. The component changes required to enable these

improvements contribute to an MPC of $205.92 for standard residential dishwashers. At TSL 1, for compact residential dishwashers, DOE expects manufacturers would reduce sump volumes, and incorporate improved controls, tub insulation, and a permanent magnet motor. The component changes required to enable these improvements contribute to an MPC of $176.83 for compact residential dishwashers.

Approximately 11 percent of standard residential dishwasher shipments and 63 percent of compact residential dishwasher shipments currently meet the standards specified at TSL 1 (255 kWh/year and 3.1 gal/cycle for the standard product class, and 203 kWh/year and 3.1 gal/cycle for the compact product class). Because some standard residential dishwashers do not currently employ these energy and water saving measures, the product and capital conversion costs for standard residential dishwashers are estimated to total $224.9 million based on the scaled conversion costs taken from the 2012 Direct Final Rule, or $155.5 million based on the engineering cost model, as the production lines responsible for producing over 89 percent of standard product shipments would need retooling and upgrades. For manufacturers of compact residential dishwashers, these investments total $9.8 million based on the scaled conversion costs taken from the 2012 Direct Final Rule, or $7.3 million based on the engineering cost model. Accordingly, the conversion costs required to design and produce compliant standard residential dishwashers contribute to the majority of impacts on INPV at TSL 1.

At TSL 2, DOE estimates impacts on INPV to range from −$203.3 million to −$68.3 million, or a change in INPV of −38.5 percent to −13.0 percent. At this level, industry free cash flow is estimated to decrease by as much as 235.1 percent to −$53.2 million, compared to the no-new-standards case value of $39.4 million in the year leading up to the amended energy conservation standards.

At TSL 2, although overall INPV impacts are indicative of impacts on INPV for the standard residential dishwasher industry, DOE estimates impacts on compact residential dishwasher INPV to range from −$12.1 million to −$11.4 million, or a change in INPV of −297.0 percent to −280.0 percent. Because these impacts are attributed to manufacturers of compact residential dishwashers in the countertop configuration, DOE expects that manufacturers would exit the market for these products at TSL 2.

For standard residential dishwashers, TSL 2 corresponds to the same efficiency level (EL 3) as that corresponding to TSL 1. Therefore, at TSL 2, DOE expects manufacturers would incorporate the same design option changes as described for TSL 1. The component changes required to enable these improvements contribute to an MPC of $205.92 for standard residential dishwashers. At TSL 2, for compact residential dishwashers, in addition to the design changes required for baseline units to reach TSL 1, DOE expects manufacturers would optimize the hydraulic system, integrate improved filters, and incorporate the internal water heater into the base of the tub. The component changes required to enable these improvements contribute to an MPC of $196.44 for compact residential dishwashers at TSL 2.

For standard residential dishwashers, approximately 11 percent of shipments currently meet the standards specified at TSL 2 (255 kWh/year and 3.1 gal/cycle). Similarly, 11 percent of compact residential dishwasher shipments currently meet the standards specified at TSL 2 (130 kWh/year and 1.7 gal/cycle). Because some standard residential dishwashers do not currently employ these energy and water saving measures, the product and capital conversion costs for standard residential dishwashers are estimated to total $224.9 million based on the scaled conversion costs taken from the 2012 Direct Final Rule, or $155.5 million based on the engineering cost model, as the production lines responsible for producing over 89 percent of standard product shipments would need retooling and upgrades. For manufacturers of compact residential dishwashers, these investments total $13.0 million based on the scaled conversion costs taken from the 2012 Direct Final Rule, or $13.9 million based on the engineering cost model. Accordingly, the conversion costs required to design and produce compliant standard residential dishwashers contribute to the majority of impacts on INPV at TSL 2.

b. Direct Impacts on Employment

To quantitatively assess the impacts of energy conservation standards on direct employment, DOE used the GRIM to estimate the domestic labor expenditures and number of production and non-production employees in the no-new-standards case and at each TSL. DOE used statistical data from the U.S. Census Bureau's 2014 *Annual Survey of Manufactures* (*ASM*), results of the engineering analysis, and manufacturer feedback to calculate industry-wide labor expenditures and direct domestic employment levels.

Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to domestic production employment levels. To do this, DOE relied on the Production Workers Annual Wages, Production Workers Annual Hours, Total Fringe Benefits, Annual Payroll, Production Workers Average for Year, and Number of Employees from the *ASM* to convert total labor expenditure to total production employees.

The total production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer feedback, product database analysis, and publicly available information. DOE estimates that 80 percent of the standard residential dishwashers are produced domestically and that there are currently no compact residential dishwashers produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling products within the original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific equipment covered by this rulemaking.

Non-production workers account for the remainder of the direct employment figure. The non-production employees covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, management, *etc.* Using the amount of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant

between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 3,829 domestic workers in the residential dishwasher industry in 2019. Table V.13 shows the range of the impacts of amended energy conservation standards on U.S. manufacturing employment in the residential dishwasher industry. The discussion below provides a qualitative evaluation of the range of potential impacts presented in the table.

TABLE V.13—TOTAL NUMBER OF DOMESTIC RESIDENTIAL DISHWASHER PRODUCTION WORKERS IN 2019

	No-new-standards case	Trial standard level	
		1	2
Domestic Production Workers in 2019	3,116	800 to 3,241	800 to 3,241
Domestic Non-Production Workers in 2019	713	741	741
Total Direct Domestic Employment in 2019	3,829	1,541 to 3,982	1,541 to 3,982

The direct employment impacts shown in Table IV.13 represent the potential domestic employment changes that could result from amended energy conservation standards for residential dishwashers. The upper bound estimate corresponds to the increase in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered equipment within the United States after compliance takes effect. The lower bound of the range represents the estimated maximum decrease in the total number of U.S. domestic workers if production of non-compliant product platforms is moved to lower labor-cost countries.

Because TSL 1 and TSL 2 both correspond to Efficiency Level 3 for standard residential dishwashers, the employment impacts displayed in Table V.13 are the same at TSL 1 and TSL 2. Both show a 4 percent increase in domestic production and non-production employment relative to the no-new-standards case, provided manufacturers do not relocate production facilities outside of the United States. However, some of the design options analyzed will require manufacturers to completely redesign product platforms. Because of the large upfront capital and product development costs associated with platform redesigns, and the fact that few existing units meet the standards at TSL 1 and TSL 2, some manufacturers may consider relocating some of their domestic production of residential dishwashers to lower-labor-cost countries for standards at those TSLs. This scenario is reflected by the lower bound of results in Table V.13. For both TSLs, the lower bound of results correspond to a 74 percent decrease in domestic production employment production, and assumes manufacturers of residential dishwashers decide to shift production of their non-compliant platforms abroad (or source from abroad, maintaining the same number platform offerings).

Additionally, in response to the 2014 NOPR, AHAM commented that DOE underestimated the retail price increase and the subsequent decline in industry shipments resulting from amended energy conservation standards. (AHAM, No. 21 at pp. 14–15) A greater decrease in total shipments than what is modeled in this final rule could also result in a decrease in domestic production employment, as manufacturers react to lower demand by reducing their manufacturing workforce.

Additional detail on the analysis of direct employment can be found in chapter 12 of the final rule TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the final rule TSD.

c. Impacts on Manufacturing Capacity

Approximately 11 percent of shipments of residential dishwashers already comply with the energy conservation standard levels analyzed in this rulemaking. Not every manufacturer that ships standard residential dishwashers offers products that meet these standards. Because manufacturers would need to make substantial platform changes by the 2019 compliance date, many would have to run parallel production between the announcement of the final rule and the compliance date. This requirement may impact manufacturing capacity during this interim period.

d. Impacts on Sub-Groups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE examined the potential for disproportionate impacts on small business manufacturers, as discussed in section VI.B of this final rule. DOE did not identify any other manufacturer subgroups for this rulemaking.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden, DOE considers the impacts of other Federal regulations affecting manufacturers of residential dishwashers that will take effect approximately 3 years before or after the 2019 compliance date of this rulemaking. Most of the major regulations identified by DOE that meet this criterion are other energy conservation standards for products and equipment also made by manufacturers of residential dishwashers.

Table V.14 lists the other energy conservation standards affecting dishwasher manufacturers. For each rule, the table lists the rule's standard compliance year, the total number of manufacturers operating in that given industry, the number of dishwasher

manufacturers affected by the rule, and the approximate year that compliance with standards will be required. The table also contains expected industry conversion costs for the given rule, as well as industry conversion costs as a percentage of conversion period industry revenues.

TABLE V.14—OTHER ENERGY CONSERVATION STANDARDS RULEMAKINGS AFFECTING THE RESIDENTIAL DISHWASHER INDUSTRY

Regulation	Number of manufacturers *	Manufacturers from final rule **	Approximate standards year	Industry conversion costs (millions $)	Industry conversion cost/revenue † (%)
Residential Microwave Ovens, 78 FR 36316 (June 17, 2013).	14	9	2016	$43.1 million (2010$)	0.6
Commercial Refrigeration Equipment, 79 FR 17725 (March 28, 2014).	54	1	2017	$184.0 million (2012$) ..	2.0
PTAC, 80 FR 43162 (July 21, 2015)	12	2	2017	N/A ††	†† N/A
Automatic Commercial Ice Makers, 80 FR 4645 (Jan. 28, 2015).	16	4	2018	$25.1 million (2013$)	2.5
Residential Clothes Washers, 77 FR 32308 (May 31, 2012).	13	10	2018	$418.5 million (2010$) ..	2.3
Commercial Clothes Washers, 79 FR 74492 (Dec. 15, 2014).	6	3	2018	$10.2 million (2013$)	2.2
Dehumidifiers, 81 FR 38338 (June 13, 2016)	30	4	2019	$52.5 million (2014$)	4.5
Kitchen Ranges and Ovens, 81 FR 60784 (Sept. 2, 2016).	21	11	2019	$119.2 million (2015$) ..	0.8
Portable ACs, 81 FR 38398 (June 13, 2016)	10	3	2021	$302.8 million (2014$) ..	8.6

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing dishwashers that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.

† This column presents conversion costs as a percentage of cumulative revenue for the industry during the conversion period. The conversion period is the timeframe over which manufacturers must make conversion costs investments and lasts from the announcement year of the final rule to the standards year of the final rule. This period typically ranges from 3 to 5 years, depending on the energy conservation standard.

†† As detailed in the energy conservation standards final rule for packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), DOE established amended energy efficiency standards for PTAC equipment at the minimum efficiency level specified in the ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers/Illuminating Engineering Society Standard 90.1–2013 for PTAC equipment. Accordingly, there were no conversion costs associated with amended energy conservation standards for PTACs.

During the comment period following the NOPR public meeting, manufacturers provided comments relating to the substantial effects of multiple overlapping DOE energy conservation standards on manufacturers of residential dishwashers. DOE summarized and addressed these comments in section IV.J.3 of this final rule. For more details, see chapter 12 of the final rule TSD.

DOE will continue to evaluate its approach to assessing cumulative regulatory burden for use in future rulemakings to ensure that it is effectively capturing the overlapping impacts of its regulations. In particular, DOE will assess whether looking at rules where any portion of the compliance period potentially overlaps with the compliance period for the subject rulemaking would yield a more accurate reflection of cumulative regulatory burden.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for residential dishwashers, DOE compared the energy consumption under the no-new-standards case to the anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2019–2048). Table V.15 presents DOE's projections of the national energy and water savings for each TSL considered for residential dishwashers. The savings were calculated using the approach described in section IV.H.2 of this final rule.

TABLE V.15—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR RESIDENTIAL DISHWASHERS; 30 YEARS OF SHIPMENTS

[2019–2048]

	Trial standard level	
	1	2
Primary energy (*quads*)	0.46	0.47
FFC energy (*quads*)	0.49	0.50
Water (*trillion gallons*)	0.42	0.43

OMB Circular A–4 [76] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy

[76] OMB. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/.*

conservation standards and potential revision of and compliance with such revised standards.[77] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to residential dishwashers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.16. The impacts are counted over the lifetime of residential dishwashers purchased in 2019–2027.

TABLE V.16—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR RESIDENTIAL DISHWASHERS; 9 YEARS OF SHIPMENTS

[2019–2027]

	Trial standard level	
	1	2
Primary energy (*quads*)	0.13	0.13
FFC energy (*quads*)	0.13	0.14
Water (*trillion gallons*)	0.11	0.11

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for residential dishwashers. In accordance with OMB's guidelines on regulatory analysis,[78] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.17 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2019–2048.

TABLE V.17—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR RESIDENTIAL DISHWASHERS; 30 YEARS OF SHIPMENTS

[2019–2048]

Discount rate	Trial standard level	
	1	2
	Billion 2015$	
3 percent	2.08	2.21
7 percent	0.33	0.37

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.18. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.18—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR RESIDENTIAL DISHWASHERS; 9 YEARS OF SHIPMENTS

[2019–2027]

Discount rate	Trial standard level	
	1	2
	Billion 2015$	
3 percent	0.49	0.53
7 percent	0.03	0.05

The results in Table V.17 reflect the use of a default trend to estimate the change in price for residential dishwashers over the analysis period (see section IV.H.3 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the final rule TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE expects that amended energy conservation standards for residential dishwashers would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.F of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2019–2024), where these uncertainties are reduced.

The results suggest that the proposed standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

Impacts to consumer utility of the standard levels analyzed in this rulemaking are discussed in section IV.C.1.b of this final rule. Because DOE is not amending standards in this final rule, DOE is not reducing the utility or performance of residential dishwashers.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from amended standards, but has determined not to finalize amended standards in this rulemaking. In addition, as discussed in section III.E.1.e of this final rule, because DOE is not amending standards in this final rule, review by the Department of Justice to assess the impact of any lessening of competition is not required.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the final rule TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case,

[77] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[78] OMB. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/.*

for the TSLs that DOE considered in this rulemaking.

Energy conservation from potential energy conservation standards for residential dishwashers is expected to yield environmental benefits in the form of reduced emissions of air pollutants and GHGs. Table V.19 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector and site emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K of this final rule. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.19—CUMULATIVE EMISSIONS REDUCTION FOR RESIDENTIAL DISHWASHERS SHIPPED IN 2019–2048

	Trial standard level	
	1	2
Power Sector and Site Emissions		
CO_2 (*million metric tons*) ..	24.2	25.0
SO_2 (*thousand tons*)	10.5	10.9
NO_X (*thousand tons*)	45.3	46.2
Hg (*tons*)	0.03	0.04
CH_4 (*thousand tons*)	1.6	1.7
N_2O (*thousand tons*)	0.2	0.2
Upstream Emissions		
CO_2 (*million metric tons*) ..	2.2	2.2
SO_2 (*thousand tons*)	0.1	0.1
NO_X (*thousand tons*)	32.4	33.2
Hg (*tons*)	0.00	0.00
CH_4 (*thousand tons*)	205.8	210.9
N_2O (*thousand tons*)	0.0	0.0
Total FFC Emissions		
CO_2 (*million metric tons*) ..	26.4	27.2
SO_2 (*thousand tons*)	10.6	11.0
NO_X (*thousand tons*)	77.7	79.4
Hg (*tons*)	0.03	0.04
CH_4 (*thousand tons*)	207.5	212.6
N_2O (*thousand tons*)	0.2	0.3

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this final rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for residential dishwashers. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions correspond to the average values from a distribution that uses a 5-percent discount rate, the average values from a distribution that uses a 3-percent discount rate, the average values from a distribution that uses a 2.5-percent discount rate, and the 95th-percentile values from a distribution that uses a 3-percent discount rate. For emissions in 2015, the SCC values (expressed in 2015$) are represented by $12.4/t, $40.6/t, $63.2/t, and $118/t, respectively. The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V.20 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the final rule TSD.

TABLE V.20—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR RESIDENTIAL DISHWASHERS SHIPPED IN 2019–2048

TSL	SCC Case *			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
	Million 2015$			
1	183	841	1,337	2,562
2	188	866	1,377	2,639

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.4, $40.6, $63.2, and $118 per metric ton (2015$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other GHGs).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this final rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for residential dishwashers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.21 presents the cumulative present values for NO_X emissions reductions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.22.

TABLE V.21—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR RESIDENTIAL DISHWASHERS SHIPPED IN 2019–2048

TSL	3% Discount rate	7% Discount rate
	Million 2015$	
1	249	100
2	254	102

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table IV.21 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the 2015 values in the four sets of SCC values discussed above. The dollar-per-ton values that DOE used for NO_X emissions are presented in appendix 14C of the final rule TSD.

TABLE V.22—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Case $12.4/t and 3% Low NO_X values	SCC Case $40.6/t and 3% Low NO_X values	SCC Case $63.2/t and 3% Low NO_X values	SCC Case $118/t and 3% Low NO_X values
	Billion 2015$			
1	2.5	3.2	3.7	4.9
2	2.6	3.3	3.8	5.1
TSL	Consumer NPV at 7% discount rate added with:			
	SCC case $12.4/t and 7% Low NO_X values	SCC case $40.6/t and 7% Low NO_X values	SCC case $63.2/t and 7% Low NO_X values	SCC case $118/t and 7% Low NO_X values
	Billion 2015$			
1	0.6	1.3	1.8	3.0
2	0.7	1.3	1.9	3.1

Note: The SCC case values represent the global SCC in 2015, in 2015$ per metric ton (t), for each case.

The national operating cost savings are domestic U.S. monetary savings that occur as a result of purchasing the covered residential dishwashers. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this rule. Because CO_2 emissions have a very long residence time in the atmosphere, the SCC values in future years reflect future climate-related impacts that continue beyond 2100 through 2300.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this final rule, DOE considered the impacts of potential amended standards for residential dishwashers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the

evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[79]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[80] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

Table V.23 and Table V.24 summarize the quantitative impacts estimated for each TSL for residential dishwashers. The national impacts are measured over the lifetime of residential dishwashers purchased in the 30-year period that begins in the anticipated year of compliance with potential amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this final rule.

TABLE V.23—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL DISHWASHER TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2
Cumulative FFC National Energy Savings (*quads*)		
	0.49	0.50
NPV of Consumer Costs and Benefits (*2015$ billion*)		
3% discount rate	2.08	2.21
7% discount rate	0.33	0.37
Cumulative FFC Emissions Reduction (Total FFC Emission)		
CO_2 (*million metric tons*)	26.4	27.2
SO_2 (*thousand tons*)	10.6	11.0
NO_X (*thousand tons*)	77.7	79.4
Hg (*tons*)	0.03	0.04
CH_4 (*thousand tons*)	207.5	212.6
N_2O (*thousand tons*)	0.2	0.3
Value of Emissions Reduction (Total FFC Emissions)		
CO_2 (*2015$ million*)*	183 to 2,562	188 to 2,639
NO_X—3% discount rate (*2015$ million*)	249.0 to 561.3	253.8 to 572.1
NO_X—7% discount rate (*2015$ million*)	99.9 to 226.1	101.8 to 230.5

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL DISHWASHER TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2
Manufacturer Impacts		
Industry NPV (2015$ million) (No-new-standards case, INPV = 527.7)	327.0 to 464.7	324.4 to 459.3
Industry NPV *(% change)*	(38.0) to (11.9)	(38.5) to (13.0)

[79] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: 10.1111/0034–6527.00354.

[80] Sanstad, A. H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf.*

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL DISHWASHER TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2
Consumer Average LCC Savings (*2015$*)		
Standard Dishwasher	0.28	0.28
Compact Dishwasher	17	90
Shipment-Weighted Average *	0.41	1.00
Consumer Simple PBP (*years*)		
Standard Dishwasher	12.9	12.9
Compact Dishwasher	4.8	3.3
Shipment-Weighted Average *	12.8	12.7
% of Consumers that Experience Net Cost		
Standard Dishwasher	58	58
Compact Dishwasher	8	12
Shipment-Weighted Average *	57.6	57.6

Parentheses indicate negative (−) values.
* Weighted by shares of each product class in total projected shipments in 2019

DOE first considered TSL 2, which represents Efficiency Level 3 for product class 1 and max-tech for product class 2. TSL 2 would save 0.50 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.37 billion using a discount rate of 7 percent, and $2.21 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 27.2 Mt of CO_2, 11.0 thousand tons of SO_2, 79.4 thousand tons of NO_X, 0.04 tons of Hg, 212.6 thousand tons of CH_4, and 0.26 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 2 ranges from $188 million to $2,639 million.

At TSL 2, the average LCC impact is a savings of $0.28 for standard residential dishwashers and $90 for compact residential dishwashers. The simple payback period is 12.9 years for standard residential dishwashers and 3.3 years for compact residential dishwashers. The fraction of consumers experiencing a net LCC cost is 58 percent for standard residential dishwashers and 12 percent for compact residential dishwashers.

At TSL 2, the projected change in INPV ranges from a decrease of $203.3 million to a decrease of $68.3 million, which correspond to decreases of 38.5 percent and 13.0 percent, respectively. Products that meet the efficiency standards specified by this TSL are projected to represent 11 percent of shipments in the year leading up to amended standards. As such, manufacturers would have to redesign nearly all products by the expected 2019 compliance date to meet demand. Redesigning nearly all units to meet the current max-tech efficiency levels would require considerable capital and product conversion expenditures. At TSL 2, the capital conversion costs total as much as $143.2 million, 1.7 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that complete platform redesigns would cost the industry $94.8 million in product conversion costs. These conversion costs largely relate to the extensive research programs required to develop new products that meet the efficiency standards set forth by TSL 2. These costs are equivalent to 2.5 times the industry annual budget for R&D. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 2 could require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 2. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 2 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss to manufacturers of 38.5 percent of INPV. DOE also notes that the significant impacts on the INPV of compact residential dishwasher manufacturers, as discussed in section V.B.2.a of this final rule, would likely result in the elimination of countertop products from the market.

Additionally, at TSL 2, there is uncertainty regarding whether products would be able to maintain consumer utility. The current test method for measuring cleaning performance, the ENERGY STAR Cleaning Performance Test Method, may have variable results. DOE also received conflicting feedback over whether consumer utility would be negatively impacted at TSL 2. For these reasons, DOE cannot be certain that TSL 2 would not negatively impact consumer utility.

The Secretary concludes that at TSL 2 for residential dishwashers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, the potential for negative consumer utility impacts, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 2 is not economically justified.

DOE then considered TSL 1, which represents Efficiency Level 3 for product class 1 and Efficiency Level 1 for product class 2. TSL 1 would save an estimated 0.49 quads of energy, an amount DOE considers significant. Under TSL 1, the NPV of consumer benefit would be $0.33 billion using a discount rate of 7 percent, and $2.08 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 1 are 26.4 Mt of CO_2, 10.6 thousand tons of SO_2, 77.7 thousand

tons of NO_X, 0.03 tons of Hg, 207.5 thousand tons of CH_4, and 0.25 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 1 ranges from $183 million to $2,562 million.

At TSL 1, the average LCC impact is a savings of $0.28 for standard residential dishwashers and $17 for compact residential dishwashers. The simple payback period is 12.9 years for standard residential dishwashers and 4.8 years for compact residential dishwashers. The fraction of consumers experiencing a net LCC cost is 58 percent for standard residential dishwashers and 8 percent for compact residential dishwashers.

At TSL 1, the projected change in INPV ranges from a decrease of $200.7 million to a decrease of $63.0 million, which represent decreases of 38.0 percent and 11.9 percent, respectively. Products that meet the efficiency standards specified by this TSL are projected to represent approximately 11 percent of shipments in the year leading up to amended standards. As such, manufacturers would have to overhaul a significant fraction of products by the 2019 compliance date to meet demand. At TSL 1, the estimated capital conversion costs total as much as $141.1 million, which is 1.7 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that the redesigns necessary to meet these standards would cost the industry $93.7 million in product conversion costs. These conversion costs largely relate to the research programs required to develop products that meet the efficiency standards set forth by TSL 1, and are 2.5 times the industry annual budget for R&D in the year leading up to amended standards. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 1 would still require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 1 would yield impacts closer to the high end of the range of INPV impacts as indicated by the preservation of operating profit markup scenario. If the high end of the range of impacts is reached, as DOE expects, TSL 1 could result in a net loss of 38.0 percent in INPV to manufacturers of residential dishwashers.

Additionally, at TSL 1, there is uncertainty regarding whether products would be able to maintain consumer utility for the same reasons as discussed for TSL 2. The current test method for measuring cleaning performance, the ENERGY STAR Cleaning Performance Test Method, may have variable results. DOE also received conflicting feedback over whether consumer utility would be negatively impacted at TSL 1. For these reasons, DOE cannot be certain that TSL 1 would not negatively impact consumer utility.

The Secretary concludes that at TSL 1 for residential dishwashers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, the potential for negative consumer utility impacts, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 1 is not economically justified.

Therefore, based on the above considerations, DOE concludes that amended energy conservation standards for residential dishwashers would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. Therefore, DOE has determined not to amend the residential dishwasher energy conservation standards.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866, ''Regulatatory Planning and Review.'' 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget did not review this rule.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

For manufacturers of residential dishwashers, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. Manufacturers of residential dishwashers have a primary NAICS code of 335228, ''Other Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this NAICS code.

To estimate the number of small businesses which could be impacted by the amended energy conservation standards, DOE conducted a market survey using all available public information to identify potential small manufacturers. To identify small business manufacturers, DOE surveyed the May 2012 direct final rule for residential dishwasher energy conservation standards, the AHAM membership directory,[81] DOE's Compliance Certification Database,[82] and individual company Web sites. DOE screened out companies that did not themselves manufacture products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign owned and operated.

Approximately half of the total domestic market for residential dishwashers is manufactured in the United States by one corporation. Together, this manufacturer and three other manufacturers do not meet the definition of a small business manufacturer and comprise at least 90 percent of the residential dishwasher market. The small portion of the remaining residential dishwasher market is supplied by a combination of approximately 10 OEMs. All of these companies are either foreign-owned and operated, or exceed the SBA's employment threshold for consideration as a small business under the appropriate NAICS code. Therefore, DOE did not identify any domestic small business manufacturers of residential dishwashers.

DOE reviewed this final rule pursuant to the Regulatory Flexibility Act and the procedures and policies discussed

[81] *https://www.aham.org/AHAM/AuxCurrentMembers.*

[82] *https://www.regulations.doe.gov/certification-data/.*

above. DOE finds that amended energy conservation standards for residential dishwashers would not be economically justified. Therefore, the rule does not establish amended energy conservation standards for residential dishwashers. On the basis of the foregoing, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a FRFA for this final rule.

C. Review Under the Paperwork Reduction Act

Manufacturers of residential dishwashers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential dishwashers. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

This rule, which finds that amended energy conservation standards for residential dishwashers would not be economically justified, imposes no new information or record keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE determines that amended energy conservation standards for residential dishwashers would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time because amended standards are not being adopted. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated.'' Because this rule concludes that amended standards are not warranted, and does not establish such amended standards, DOE has determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. As this final rule does not amended the standards for residential dishwashers, there is no impact on the policymaking discretion of the States. Therefore, no action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.* This final rule does not contain a Federal intergovernmental mandate, nor is it

expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because this final rule does not amend standards for residential dishwashers, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www.energy.gov/eere/buildings/peer-review*.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promultagion of this rule prior to its effective date. The report will state that it has been determined that the rule is a not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on November 22, 2016.

David J. Friedman,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 430 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

§ 429.4 [Amended]

■ 2. Section 429.4 is amended by removing paragraph (b)(1) and redesignating paragraphs (b)(2) and (3) as (b)(1) and (2), respectively.

■ 3. Section 429.19 is amended by revising paragraph (b)(3) to read as follows:

§ 429.19 Dishwashers.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information the capacity in number of place settings as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 429.4), presence of a soil sensor (if yes, the number of cycles required to reach calibration), the water inlet temperature used for testing in degrees Fahrenheit (°F), the cycle selected for energy testing and whether that cycle is soil-sensing, the options selected for the energy test, and presence of a built-in water softening system (if yes, the energy use in kilowatt-hours and the water use in gallons required for each regeneration of the water softening system, the number of regeneration cycles per year, and data and calculations used to derive these values).

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 5. Section 430.3 is amended by removing paragraph (i)(2) and redesignating paragraphs (i)(3) through (9) as (i)(2) through (8), respectively.

■ 6. Section 430.23 is amended by revising paragraph (c) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart, $EAOC = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2)))$.

(B) For dishwashers not having a truncated normal cycle, $EAOC = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F))$.

Where,

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

E_{TLP} = the annual combined low-power mode energy consumption in kilowatt-hours per year and determined according to section 5.7 of appendix C1 to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine energy consumption per cycle for the normal cycle, as defined in section 1.12 of appendix C1 to this subpart, in kilowatt-hours and determined according to section 5.1.1 of appendix C1 to this subpart for non-soil-sensing dishwashers and section 5.1.2 of appendix C1 to this subpart for soil-sensing dishwashers,

M_{WS} = the machine energy consumption per cycle for water softener regeneration, in kilowatt-hours and determined according to section 5.1.3 of appendix C1 to this subpart,

E_F = the fan-only mode energy consumption per cycle, in kilowatt-hours and determined according to section 5.2 of appendix C1 to this subpart, and

E_D = the drying energy consumption, in kilowatt-hours and defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle; determined according to section 5.3 of appendix C1 to this subpart.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart, $EAOC = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2))) + (D_e \times N \times (W + W_{WS}))$.

(B) For dishwashers not having a truncated normal cycle, $EAOC = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)) + (D_e \times N \times (W + W_{WS}))$.

Where,

D_e, E_{TLP}, N, M, M_{WS}, E_F, and E_D, are defined in paragraph (c)(1)(i) of this section,

W = the water energy consumption per cycle for the normal cycle, as defined in section 1.12 of appendix C1 to this subpart, in kilowatt-hours and determined according to section 5.5.1.1 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.5.2.1 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F, and

W_{WS} = the water softener regeneration water energy consumption per cycle in kilowatt-hours and determined according to section 5.5.1.2 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.5.2.2 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart, $EAOC_g = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2))) + (D_g \times N \times (W_g + W_{WSg}))$.

(B) For dishwashers not having a truncated normal cycle, $EAOC_g = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)) + (D_g \times N \times (W_g + W_{WSg}))$.

Where,

D_e, E_{TLP}, N, M, M_{WS}, E_F, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary,

W_g = the water energy consumption per cycle for the normal cycle, as defined in section 1.12 of appendix C1 to this subpart, in Btus and determined according to section 5.6.1.1 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.6.2.1 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F, and

W_{WSg} = the water softener regeneration energy consumption per cycle in Btu per cycle and determined according to section 5.6.1.2 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.6.2.2 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F.

(2) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year must be rounded to the nearest kilowatt-hour per year and is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart:

$$EAEU = (M + M_{WS} + E_F - (E_D/2) + W + W_{WS}) \times N + (E_{TLP})$$

Where,

M, M_{WS}, E_D, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS} are defined in paragraph (c)(1)(ii) of this section.

(ii) For dishwashers not having a truncated normal cycle:

$$EAEU = (M + M_{WS} + E_F + W + W_{WS}) \times N + E_{TLP}$$

Where,

M, M_{WS}, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS} are defined in paragraph (c)(1)(ii) of this section.

(3) The sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, expressed in gallons per cycle and defined in section 5.4 of appendix C1 to this subpart, must be rounded to one decimal place.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C1 to this subpart.

* * * * *

Appendix C to Subpart B of Part 430—[Removed]

■ 7. Appendix C to subpart B of part 430 is removed.

■ 8. Appendix C1 is amended by revising the introductory note to read as follows:

Appendix C1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: Manufacturers must test all dishwashers using the provisions of Appendix C1 to certify compliance with energy conservation standards and to make any other representations related to energy and/or water consumption.

* * * * *

§ 430.32 [Amended]

■ 9. Section 430.32 is amended by:
■ a. Removing paragraph (f)(1) introductory text;
■ b. Removing and reserving paragraph (f)(2); and
■ c. Redesignating paragraph (f)(3) as (f)(1).

[FR Doc. 2016–29328 Filed 12–12–16; 8:45 am]
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Part III

Federal Trade Commission

Enforcement Policy Statement on Marketing Claims for OTC Homeopathic Drugs; Notice

FEDERAL TRADE COMMISSION

Enforcement Policy Statement on Marketing Claims for OTC Homeopathic Drugs

AGENCY: Federal Trade Commission.

ACTION: Commission policy statement.

SUMMARY: The Federal Trade Commission has issued an Enforcement Policy Statement on Marketing Claims for OTC Homeopathic Drugs. The Statement describes the level of substantiation that the Commission expects for marketing claims for over-the-counter (OTC) homeopathic drugs. It also recognizes that marketing claims for OTC homeopathic products for an unsubstantiated indication might be made non-deceptive by the inclusion of additional explanatory information that effectively communicates to consumers that there is no scientific evidence that the product works and that the product's claims are based only on theories of homeopathy from the 1700s that are not accepted by most modern medical experts.

DATES: The Commission announced the issuance of the Statement on November 15, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer (202–326–2699) or Richard Cleland (202–326–3088), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Enforcement Policy Statement on Marketing Claims for OTC Homeopathic Drugs

The Federal Trade Commission (FTC) is issuing this Policy Statement to provide guidance regarding its enforcement policy with respect to marketing claims for over-the-counter (OTC) homeopathic drugs. It applies only to OTC products intended solely for self-limiting disease conditions [1] amenable to self-diagnosis of symptoms and treatment.[2] The Commission believes this Policy Statement is appropriate in light of the burgeoning mainstream marketing of OTC homeopathic products alongside other OTC drugs.

The FTC's authority over disease and other health-related claims comes from Sections 5 and 12 of the FTC Act. Section 5, which applies to both advertising and labeling, prohibits unfair or deceptive acts or practices in or affecting commerce, such as the deceptive advertising or labeling of OTC drugs.[3] Section 12 prohibits the dissemination of false advertisements in or affecting commerce of food, drugs, devices, services, or cosmetics.[4] Under these provisions, companies must have a reasonable basis for making objective product claims, including claims that a product can treat specific conditions, before those claims are made.[5]

Homeopathy, which dates back to the late-eighteenth century, is based on the view that disease symptoms can be treated by minute doses of substances that produce similar symptoms when provided in larger doses to healthy people. Many homeopathic products are diluted to such an extent that they no longer contain detectable levels of the initial substance. In general, homeopathic product claims are not based on modern scientific methods and are not accepted by modern medical experts, but homeopathy nevertheless has many adherents.[6]

In 1988, the Food & Drug Administration (FDA) issued a Compliance Policy Guide (CPG) entitled ''Conditions Under Which Homeopathic Drugs May be Marketed,'' which permitted marketers to distribute OTC homeopathic products without demonstrating their efficacy.[7] Under the CPG, only homeopathic products intended solely for self-limiting disease conditions amenable to self-diagnosis of symptoms and treatment may be marketed OTC. The CPG requires that OTC homeopathic drugs be labeled as homeopathic and that their labeling display at least one major OTC indication for use.

The FTC Act does not exempt homeopathic products from the general requirement that objective product claims be truthful and substantiated.[8] Nevertheless, in the decades since the Commission announced in 1972 that objective product claims must be substantiated,[9] the FTC has rarely challenged misleading claims for products that were homeopathic or purportedly homeopathic.[10]

Efficacy and safety claims for homeopathic drugs are held to the same standards as similar claims for non-homeopathic drugs. As articulated in the Advertising Substantiation Policy Statement, advertisers must have ''at least the advertised level of substantiation.'' Absent express or implied reference to a particular level of support, the Commission, in evaluating the types of evidence necessary to substantiate a claim, considers ''the type of claim, the product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts believe is reasonable.'' [11] For health, safety, or efficacy claims, the FTC has generally required that advertisers possess ''competent and reliable scientific evidence,'' defined as ''tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and [that] are generally accepted in the profession to yield accurate and reliable results.'' [12] In general, for health benefit claims, particularly claims that a product can treat or prevent a disease or its symptoms, the substantiation required has been well-designed human clinical testing.[13]

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[1] A self-limiting disease condition is one that resolves spontaneously with or without specific treatment.

[2] This Policy Statement does not apply to the practice of medicine.

[3] Federal Trade Commission Act, 15 U.S.C. 45(a)(2).

[4] Federal Trade Commission Act, 15 U.S.C. 52.

[5] *See* Advertising Substantiation Policy Statement, appended to *Thompson Medical Co.,* 104 F.T.C. 648, 839 (1984), *aff'd,* 791 F.2d 189 (D.C. Cir. 1986) (''Advertising Substantiation Policy Statement'').

[6] FTC Staff Report on the Homeopathic Medicine & Advertising Workshop (Nov. 2016).

[7] See CPG Sec. 400.400 Conditions Under Which Homeopathic Drugs May be Marketed (revised Mar. 1995), *http://www.fda.gov/iceci/compliancemanuals/compliancepolicyguidancemanual/ucm074360.htm.*

[8] ''[A] product that contemporary technology does not understand must establish that this 'magic' actually works. Proof is what separates an effect new to science from a swindle . . . . [I]f a condition responds to treatment, then selling a placebo as if it had therapeutic effect directly injures the consumer.'' *FTC* v. *QT, Inc.,* 512 F.3d 858, 862–63 (7th Cir. 2008).

[9] *See Pfizer, Inc.,* 81 F.T.C. 23, 62–64 (1972).

[10] *See, e.g.,* Complaint, *FTC* v. *HCG Diet Direct, LLC,* No. 2:14–cv–00015–NVW (D. Ariz. Jan. 7, 2014) (stipulated judgment) (challenging weight-loss claims for purported homeopathic products); Complaint, *FTC* v. *Iovate Health Scis. USA, Inc.,* No. 10–CV–587 (W.D.N.Y. July 14, 2010) (stipulated judgment) (challenging claims that purported allergy-relieving product was homeopathic and effective); *Quigley Corp.,* No. C–3926, 2000 FTC LEXIS 24 (Feb. 10, 2000) (consent order) (challenging cold treatment and prevention claims for homeopathic products); *Levey,* 116 F.T.C. 885 (1993) (consent order) (challenging weight-loss and impotency treatment claims for purported homeopathic products).

[11] Advertising Substantiation Policy Statement, 104 F.T.C. at 840. These factors are known as the *Pfizer* factors, after the 1972 case, *supra* note 9, in which they were first enunciated.

[12] *See, e.g., POM Wonderful LLC,* 155 F.T.C. 56, 193 (2013), *aff'd in part,* 777 F.3d 478, 504–05 (D.C. Cir. 2015), *cert. denied,* No. 15–525, 2016 U.S. LEXIS 2991 (May 2, 2016); *Telebrands Corp.,* 140 F.T.C. 278, 347 (2005), *aff'd,* 457 F.3d 354 (4th Cir. 2006); *Novartis Corp.,* 127 F.T.C. 580, 725 (1999), *aff'd,* 223 F.3d 783 (D.C. Cir. 2000); *Brake Guard Prods., Inc.,* 125 F.T.C. 138, 256 (1998).

[13] *See, e.g., POM Wonderful LLC,* 155 F.T.C. at 5–6 (requiring well-designed, well-conducted, double-blind, randomized controlled clinical testing to substantiate heart disease, prostate cancer, and erectile dysfunction prevention and treatment claims; also imposing such a requirement for all future disease claims), *aff'd in part,* 777 F.3d at

For the vast majority of OTC homeopathic drugs, the case for efficacy is based solely on traditional homeopathic theories and there are no valid studies using current scientific methods showing the product's efficacy. Accordingly, marketing claims that such homeopathic products have a therapeutic effect lack a reasonable basis and are likely misleading in violation of Sections 5 and 12 of the FTC Act.[14] However, the FTC has long recognized that marketing claims may include additional explanatory information in order to prevent the claims from being misleading. Accordingly, the promotion of an OTC homeopathic product for an indication that is not substantiated by competent and reliable scientific evidence may not be deceptive if that promotion effectively communicates to consumers that: (1) There is no scientific evidence that the product works and (2) the product's claims are based only on theories of homeopathy from the 1700s that are not accepted by most modern medical experts.[15] To be non-misleading, the product and the claims must also comply with requirements for homeopathic products and traditional homeopathic principles. Of course, adequately substantiated claims for homeopathic products would not require additional explanation.

Perfunctory disclaimers are unlikely to successfully communicate the information necessary to make claims for OTC homeopathic drugs non-misleading. The Commission notes:

- Any disclosure should stand out and be in close proximity to the efficacy message; to be effective, it may actually need to be incorporated into the efficacy message.
- Marketers should not undercut such qualifications with additional positive statements or consumer endorsements reinforcing a product's efficacy.
- In light of the inherent contradiction in asserting that a product is effective and also disclosing that there is no scientific evidence for such an assertion, it is possible that depending on how they are presented many of these disclosures will be insufficient to prevent consumer deception. Marketers are advised to develop extrinsic evidence, such as consumer surveys, to determine the net impressions communicated by their marketing materials.
- The Commission will carefully scrutinize the net impression of OTC homeopathic advertising or other marketing employing disclosures to ensure that it adequately conveys the extremely limited nature of the health claim being asserted. If, despite a marketer's disclosures, an ad conveys more substantiation than the marketer has, the marketer will be in violation of the FTC Act.

In summary, there is no basis under the FTC Act to treat OTC homeopathic drugs differently than other health products. Accordingly, unqualified disease claims made for homeopathic drugs must be substantiated by competent and reliable scientific evidence. Nevertheless, truthful, non-misleading, effective disclosure of the basis for an efficacy claim may be possible. The approach outlined in this Policy Statement is therefore consistent with the First Amendment, and neither limits consumer access to OTC homeopathic products nor conflicts with the FDA's regulatory scheme. It would allow a marketer to include an indication for use that is not supported by scientific evidence so long as the marketer effectively communicates the limited basis for the claim in the manner discussed above.

By direction of the Commission.

Donald S. Clark,

Secretary.

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504–05 (affirming Commission holding that competent and reliable scientific evidence consisting of randomized, well-controlled human clinical testing is needed for disease-related claims but finding fencing-in order requirement of two such tests was not justified in this instance); *see also FTC* v. *Nat'l Urological Group, Inc.,* 645 F. Supp. 2d 1167, 1202–03 (N.D. Ga. 2008) (accepting undisputed expert testimony that erectile dysfunction claims require well-designed, placebo-controlled, randomized, double-blind clinical trials for substantiation); *FTC* v. *Direct Mktg. Concepts, Inc.,* 569 F. Supp. 2d 285, 303 (D. Mass. 2008), *aff'd,* 624 F.3d 1 (1st Cir. 2010) (''it seems well-accepted that double-blind, placebo-controlled studies are necessary to substantiate health-related efficacy claims''); *Removatron Int'l Corp.,* 111 F.T.C. 206 (1988), *aff'd,* 884 F.2d 1489 (1st Cir. 1989) (requiring ''adequate and well-controlled clinical testing'' to substantiate claims for hair removal product); *Thompson Med. Co.,* 104 F.T.C. at 826 (requiring well-controlled clinical studies to substantiate certain analgesic drug claims). The Commission has also accepted numerous settlements that required randomized controlled clinical testing for disease treatment and prevention claims. *See, e.g., Brown,* 152 F.T.C. 466, 481–82 (2011) (consent order); *Nestlé HealthCare Nutrition, Inc.,* 151 F.T.C. 1, 13 (2011) (consent order); *Viral Response Sys., Inc.,* 115 F.T.C. 676, 691 (1992) (consent order).

[14] Although this Policy Statement is limited to OTC homeopathic products for the treatment of self-limiting disease conditions (ones that resolve spontaneously with or without specific treatment) amenable to self-diagnosis, marketing claims about the efficacy of homeopathic products not covered by this Policy Statement also are subject to the requirements to Sections 5 and 12.

[15] A statement that a product is based on traditional homeopathic theories might put some consumers on notice as to the basis of the product's efficacy claims. However, because many consumers do not understand what homeopathy is, the Commission does not believe that such a statement alone would adequately put consumers on notice that a product's efficacy claims are not backed by scientific evidence, and could, in fact, enhance the perceived credibility of the claim. Similarly, the Commission believes that a statement that a product's efficacy ''has not been evaluated by the Food and Drug Administration'' does not adequately address the potential lack of substantiation for a product's efficacy claims; dietary supplements bear a similar disclosure but FDA does require that dietary supplement label claims be supported by competent and reliable scientific evidence. Finally, the Commission believes that a simple statement that a product's efficacy is not supported by scientific evidence does not convey the truly limited basis for the efficacy claim and that, to avoid deceiving consumers, it is likely necessary to explain that it is not accepted by modern medicine.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 23, 25, et al.

Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems and to Pilot Compartment View Requirements for Vision Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 23, 25, 27, 29, 61, 91, 121, 125, and 135

[Docket No.: FAA–2013–0485; Amdt. Nos. 1–70, 23–63, 25–144, 27–48, 29–56, 61–139, 91–345, 121–376, 125–66, and 135–135]

RIN 2120–AJ94

Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Prior to this final rule, persons could only use an Enhanced Flight Vision System (EFVS) in lieu of natural vision to descend below the decision altitude, decision height, or minimum descent altitude (DA/DH or MDA) down to 100 feet above the touchdown zone elevation (TDZE) using certain straight-in landing instrument approach procedures (IAPs). This final rule permits operators to use an EFVS in lieu of natural vision to continue descending from 100 feet above the TDZE to the runway and to land on certain straight-in IAPs under instrument flight rules (IFR). This final rule also revises and relocates the regulations that permit operators to use an EFVS in lieu of natural vision to descend to 100 feet above the TDZE using certain straight-in IAPs. Additionally, this final rule addresses provisions that permit operators who conduct EFVS operations under parts 121, 125, or 135 to use EFVS-equipped aircraft to dispatch, release, or takeoff under IFR, and revises the regulations for those operators to initiate and continue an approach, when the destination airport weather is below authorized visibility minimums for the runway of intended landing. This final rule establishes pilot training and recent flight experience requirements for operators who use EFVS in lieu of natural vision to descend below the DA/DH or MDA. EFVS-equipped aircraft conducting operations to touchdown and rollout are required to meet additional airworthiness requirements. This final rule also revises pilot compartment view certification requirements for vision systems using a transparent display surface located in the pilot's outside field of view. The final rule takes advantage of advanced vision capabilities, thereby achieving the Next Generation Air Transportation System (NextGen) goals of increasing access, efficiency, and throughput at many airports when low visibility is the limiting factor. Additionally, it enables EFVS operations in reduced visibilities on a greater number of approach procedure types while maintaining an equivalent level of safety.

DATES: The final rule is effective March 13, 2017, except for the amendments to §§ 61.66 (amendatory instruction no. 15), 91.175 (amendatory instruction no. 18), 91.1039 (amendatory instruction no. 23), 121.651 (amendatory instruction no. 27), 125.325 (amendatory instruction no. 33), 125.381 (amendatory instruction no. 35), and 135.225 (amendatory instruction no. 38), which are effective March 13, 2018.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Terry King, Flight Technologies and Procedures Division, AFS–400, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8790; email *Terry.King@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 (49 U.S.C.). 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 49 U.S.C. 40103, which vests the Administrator with broad authority to prescribe regulations to ensure the safety of aircraft and the efficient use of airspace, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

List of Abbreviations and Acronyms Frequently Used in This Document

AC—Advisory circular
ADS–B—Automatic Dependent Surveillance-Broadcast
AFM—Airplane flight manual
AFMS—Airplane flight manual supplement
AIM—Aeronautical Information Manual
ALPA—Airline Pilots Association
APV—Approach (procedure) with vertical guidance
ASR—Airport surveillance radar
ATC—Air Traffic Control
AWO—All weather operations
AWOH ARC—All Weather Operations Harmonization Aviation Rulemaking Committee
CAA—Civil aviation authority
CVS—Combined Vision System
DA—Decision altitude
DH—Decision height
EASA—European Aviation Safety Agency
EFVS—Enhanced Flight Vision System
EVS—Enhanced Vision System
FAA—Federal Aviation Administration
FAF—Final approach fix
FFS—Full flight simulator
FPARC—Flight path angle reference cue
FPV—Flight path vector
FSB—Flight Standardization Board
GAMA—General Aviation Manufacturers Association
GPS—Global positioning system
HAI—Helicopter Association International
HGS—Head Up Guidance System
HMD—Head mounted display
HUD—Head up display
IAP—Instrument approach procedure
ICAO—International Civil Aviation Organization
ICAO HESC—International Civil Aviation Organization HUD, EVS, SVS, and CVS Subgroup
IFR—Instrument flight rules
ILS—Instrument landing system
IMC—Instrument meteorological conditions
IR—Infrared
LED—Light emitting diode
LIDAR—Laser imaging detection and ranging
LOA—Letter of authorization
LODA—Letter of deviation authority
LPV—Localizer performance with vertical guidance
MASPS—Minimum aviation system performance standards
MDA—Minimum descent altitude
MSpec—Management specifications
NextGen—Next Generation Air Transportation System
NPRM—Notice of Proposed Rulemaking
NVG—Night vision goggle
OEM—Original equipment manufacturer
OpSpec—Operations specifications
PAR—Precision approach radar
PCG—Pilot/Controller Glossary
PIC—Pilot in Command
RNAV—Area navigation
RNP—Required navigation performance
RVR—Runway visual range
SNPRM—Supplemental Notice of Proposed Rulemaking
TERPS—Terminal instrument procedures
TDZE—Touchdown Zone Elevation
VFR—Visual flight rules
VNAV—Vertical navigation
WAAS—Wide area augmentation system

Table of Contents

I. Overview of Final Rule
II. Background
A. Statement of the Problem
B. Related Actions
C. Summary of the NPRM

D. General Overview of Comments
III. Discussion of Final Rule and Public Comments
A. Revise the Definition for EFVS and Add a Definition for EFVS Operation (§ 1.1)
B. Consolidate EFVS Requirements in Part 91 in a New Section (§ 91.176)
C. Equipment, Operating, and Visibility and Visual Reference Requirements for EFVS Operations to Touchdown and Rollout (§ 91.176(a))
1. Equipment Requirements
a. Real-Time Imaging Sensors
b. Head Up Presentation Requirement for EFVS Operations
c. EFVS Terminology
d. EFVS Equipment Requirements for Foreign-Registered Aircraft
e. Line of Vision and Conformal Display
f. Flight Path Angle Reference Cue (FPARC)
g. Requirement to Display Height Above Ground Level
h. Requirement to Display Flare Prompt or Flare Guidance
i. Pilot Monitoring Display
j. Applicability of EFVS Provisions to Rotorcraft Operations
k. Requirement to Obtain a Certificate of Waiver When Conducting Certain EFVS Operations
2. Operating Requirements
a. Approaches Permitted for EFVS Operations
b. Touchdown Zone
c. Definition of ''EFVS Operation'' and Underlying Operational Concepts
d. Light Emitting Diodes (LEDs) and EFVS Operations
e. LOA Requirement for Part 91 Operators To Conduct EFVS Operations to Touchdown and Rollout
f. International EFVS Operations
g. EFVS Authorizations
h. EFVS for Takeoff Operations
i. Combined Vision Systems
j. Use of the Term ''EFVS'' in Rule Language
k. Approach Plates and EFVS Operations
l. References to EFVS-Specific Callouts
m. Miscellaneous Revisions to EFVS Operating Requirements
n. Opposing Comments on the FAA's Proposal
3. Visibility and Visual Reference Requirements
a. Visual References Below 100 Feet Above the TDZE During EFVS Operations to Touchdown and Rollout
b. Enhanced Flight Visibility Requirement During EFVS Operations to 100 Feet Above the TDZE
c. Visual References for Rollout
d. Controlling Runway Visual Range (RVR) Values
e. Emitter Technologies as Alternative Visual Aids
f. Use of EFVS To Satisfy the Visibility Requirements of §§ 91.155 and 91.157 During Rotorcraft Operations
D. Revisions to Requirements for EFVS Operations to 100 Feet Above the TDZE (§ 91.176(b))
1. Methods for Conducting Approaches During EFVS Operations to 100 Feet Above the TDZE
E. Training, Recent Flight Experience, and Refresher Training Requirements for Persons Conducting EFVS Operations (§ 61.66)
1. Training Requirements for Persons Conducting EFVS Operations (§ 61.66(a), (b) and (c))
a. Separate Training for EFVS Operations to 100 Feet Above the TDZE and EFVS Operations to Touchdown and Rollout
b. EFVS and Aircraft-Specific Training
c. Adaptation Period Prior to Using an EFVS in Flight Operations
d. Revisions To Clarify Training Requirements in § 61.66(a), (b) and (c)
2. Recent Flight Experience and EFVS Refresher Training for Persons Conducting EFVS Operations (§ 61.66(d) and (e))
3. EFVS Recent Flight Experience
4. Persons Authorized to Conduct EFVS Refresher Training
5. Revisions to § 61.57
6. Military Pilots and Former Military Pilots in the U.S. Armed Forces (§ 61.66(f))
7. Use of Full Flight Simulators (§ 61.66(g))
8. Exceptions (§ 61.66(h))
a. Manipulating the Controls (§ 61.66(h)(1)(i), (ii), and (iii)
b. Exception to Ground and Flight Training (§ 61.66(h)(2))
c. Exception to Recent Flight Experience Requirements (§ 61.66(h)(3))
d. Grandfather Clause (§ 61.66(h)(4))
F. Dispatching, Releasing, or Initiating a Flight Using EFVS-Equipped Aircraft When the Reported or Forecast Visibility at the Destination Airport is Below Authorized Minimums (§§ 121.613, 125.361, 135.219) and Initiating or Continuing an Approach Using EFVS-Equipped Aircraft When the Destination Airport Visibility is Below Authorized Minimums (§§ 121.651, 125.325, 125.381, 135.225)
G. Revisions to Category II and III General Operating Rules to Permit the Use of an EFVS (§ 91.189)
H. Pilot Compartment View Rules and Airworthiness Standards for Vision Systems With Transparent Displays Located in the Pilot's Outside Field of View (§§ 23.773, 25.773, 27.773, and 29.773)
1. Vision Systems and Display Methods Addressed by §§ 23.773, 25.773, 27.773, and 29.773
2. Pilot's Outside View—Terminology and Compensation for Interference
3. Undistorted View Requirements
4. Alignment of Vision System Cues and Head Mounted Display (HMD) Considerations
5. Requirement To Provide a Means of Immediate Deactivation and Reactivation of Vision System Imagery
6. Vision Systems and Requirements Applicable to Duties and Maneuvers
7. Issue Papers for HUD, EFVS, EVS, SVS and CVS Installations
8. Head Up Display (HUD) Installation and Bird Strike Requirements
I. Related and Conforming Amendments (§§ 91.175, 91.905, and 135.225)
J. Implementation
K. Miscellaneous Issues
1. Minimum Crew Requirements
2. Failure Modes
3. EFVS Equipment and Operational Considerations
4. Applicability of Previously Collected Data or Data Submitted on the Basis of Similarity
5. Public Aircraft Operations
6. Qualification Requirements for Persons Conducting EFVS Operations in the United States
7. Economic Comments
IV. Regulatory Notices and Analyses
A. Regulatory Evaluation
B. Regulatory Flexibility Determination
C. International Trade Impact Assessment
D. Unfunded Mandates Assessment
E. Paperwork Reduction Act
F. International Compatibility and Cooperation
G. Environmental Analysis
V. Executive Order Determinations
A. Executive Order 13132. Federalism
B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use
VI. How to Obtain Additional Information
A. Rulemaking Documents
B. Comments Submitted to the Docket
C. Small Business Regulatory Enforcement Fairness Act

I. Overview of Final Rule

This final rule modifies the requirements for EFVS operations. The FAA is revising the definition of an EFVS in § 1.1 to describe the components of an EFVS and to specify that an EFVS is an ''installed aircraft system'' rather than an ''installed airborne system'' because some EFVS operations may be conducted on the surface as well as airborne. The FAA is also adding a new term, ''EFVS operation,'' to § 1.1.

The FAA is creating new § 91.176, which contains the operating rules for EFVS operations to touchdown and rollout and for EFVS operations to 100 feet above the TDZE. The FAA is relocating to § 91.176(b) the regulations for EFVS operations to 100 feet above the TDZE, which were previously located in § 91.175(l) and (m), and is revising and restructuring these regulations. Prior to this final rule, persons could only use EFVS in lieu of natural vision to descend below DA/DH or MDA down to 100 feet above the TDZE using certain straight-in landing IAPs. Section 91.176(a) now expands the existing operational capability by permitting persons to use an EFVS in lieu of natural vision to continue descending below 100 feet above the TDZE to landing and rollout. Paragraphs (a) and (b) of § 91.176 are organized into three main areas—equipment requirements, operating requirements, and visibility and visual reference requirements. The equipment,

operating, and visibility requirements in paragraph (a) for conducting an EFVS operation to touchdown and rollout are different from the requirements in paragraph (b) for conducting an EFVS operation to 100 feet above the TDZE. In addition, persons are permitted to use two new visual references for descent below 100 feet above the TDZE for EFVS operations conducted under both § 91.176(a) and (b). The FAA is also amending the operating rules for Category II and Category III operations in § 91.189 to permit the use of EFVS in lieu of natural vision during the performance of those operations.

This final rule also establishes training and recent flight experience requirements for persons conducting EFVS operations.[1] The ground and flight training requirements in § 61.66(a), (b) and (c) apply to pilots conducting EFVS operations to 100 feet above the TDZE as well as to pilots conducting EFVS operations to touchdown and rollout. A pilot must comply with the training provisions of part 61 in addition to the training provisions of the part under which the operation is conducted, which may require additional ground and flight training appropriate to the particular assignment of the pilot flightcrew member. Recent flight experience and refresher training requirements for persons conducting EFVS operations are located in § 61.66(d) and (e). Additionally, § 61.66(f) contains the requirements applicable to military and former military pilots in the U.S. Armed Forces who wish to conduct EFVS operations under § 91.176.

The FAA is revising §§ 121.651, 125.325, 125.381, and 135.225 to permit operators of EFVS-equipped aircraft to initiate or continue an approach when the destination airport visibility is below authorized minimums. The FAA is also revising § 91.1039(e) to permit part 91 subpart K operators to conduct takeoff operations using EFVS when the visibility is less than 600 feet in accordance with the certificate holders' Management Specifications (MSpec) for EFVS operations, and to clarify that an EFVS operation is permitted when the landing weather minimums are less than those prescribed by the authority having jurisdiction over the airport.

Section 91.176(a)(2)(viii) through (xi) requires operators conducting EFVS operations to touchdown and rollout under part 91, 121, 125 (including part 125 Letter of Deviation Authority (LODA) holders), 129, or 135 to obtain FAA authorization to conduct those operations. Section 91.176(b)(2)(vii) through (ix) requires operators conducting EFVS operations to 100 feet above the TDZE under part 91 subpart K, 121, 125 (including part 125 LODA holders), or 135 to obtain FAA authorization to conduct those operations. Under § 91.176(b)(2), part 91 operators, other than those operating under part 91 subpart K, are not required to obtain FAA authorization to conduct EFVS operations to 100 feet above the TDZE.

The FAA now revises the pilot compartment view rules contained in §§ 23.773, 25.773, 27.773, and 29.773 to establish airworthiness standards for vision systems with a transparent display surface located in the pilot's outside field of view, such as a head up display, head mounted display, or other equivalent display. This final rule eliminates the current need to issue special conditions for vision system video on a head up display. The FAA notes that its Notice of Proposed Rulemaking (NPRM), ''Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes,'' 81 FR 13452 (Mar. 14, 2016), contains proposals that significantly restructure part 23. Because the part 23 NPRM is pending, references to part 23 in this final rule refer to existing part 23, and revisions to the pilot compartment view rules contained in §§ 23.773, 25.773, 27.773, and 29.773 include the general requirements that were previously contained in special conditions. Revising § 23.773 establishes a requirement that could later be used as a means of compliance if the proposed part 23 rule becomes final.

This final rule also makes related and conforming amendments to §§ 91.175, 91.905 and 135.225. The FAA is updating regulatory cross references and terms in § 91.175 to coincide with this final rule and with another FAA final rule, which was published after the NPRM.[2] The FAA is amending § 91.905 to include § 91.176 as a regulation subject to waiver. Additionally, the FAA is revising § 135.225 to correct a drafting error that arose from another final rule, ''Enhanced Flight Vision Systems,'' 69 FR 1620 (Jan. 9, 2004), and later identified in an FAA legal interpretation dated September 20, 2013.[3]

II. Background

A. Statement of the Problem

The FAA created regulations in 2004, § 91.175(l) and (m), which permitted persons to use an EFVS in lieu of natural vision to descend an aircraft below DA/DH or MDA down to 100 feet above the TDZE. These regulations, however, did not provide operators with the ability to fully utilize the benefits of EFVS technology. The FAA believes it can better leverage EFVS capabilities by issuing performance-based requirements for current and future enhanced flight vision systems, which should increase access, efficiency, and throughput at many airports when low visibility is a factor.

Under the 2004 EFVS regulations, the pilot of an aircraft operating under part 121, 125, or 135 could not begin an approach or continue an approach past the final approach fix (FAF), or, where a FAF was not used, begin the final approach segment of an instrument approach procedure, when the weather at the destination airport was reported to be below authorized minimums. These restrictions prevented persons conducting operations under parts 121, 125, or 135 from using EFVS for maximum operational benefit.

Under § 91.175(l), persons could use the enhanced flight visibility provided by an EFVS for operational benefit only in that portion of the visual segment of an approach that extended from DA/DH or MDA down to 100 feet above the TDZE. While that provided significant benefits, the requirement to transition to natural vision at 100 feet above the TDZE prevented operators from realizing the benefits of permitting EFVS operations to touchdown and rollout.

Furthermore, the 2004 EFVS regulations did not specify any training, recent flight experience, or proficiency requirements in part 61 for persons conducting EFVS operations. Since the 2004 final rule was enacted, the number of EFVS operations has significantly increased. The FAA believes this final rule will further increase the number of operators conducting EFVS operations to lower altitudes in low visibility conditions. Therefore, training, recent flight experience, and refresher training requirements in part 61 are needed to ensure an appropriate level of safety is maintained.

Additionally, the 2004 EFVS regulations did not permit persons to use EFVS for operational benefit during Category II and Category III operations. The FAA believes an EFVS can provide operational and safety benefits during Category II and Category III operations,

[1] As further discussed in section III.E of this preamble, the FAA has reorganized the training, recent flight experience, and proficiency requirements that were proposed in §§ 61.31 and 61.57 and consolidated them in new § 61.66.

[2] Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers, 78 FR 67800 (Nov. 12, 2013).

[3] Legal Interpretation, Letter to Mr. Phillip Kelsey from Mark W. Bury, Acting Assistant Chief Counsel for Regulations (September 20, 2013).

especially as more advanced imaging sensor capabilities are developed, which function more effectively in lower visibility conditions.

Finally, prior to this final rule, there were no airworthiness standards that specifically addressed vision systems, such as EFVS. Accordingly, the FAA used special conditions to certificate aircraft with vision systems, which imposed significant delays on the certification process.

B. Related Actions

The FAA revised Advisory Circular (AC) 90–106, Enhanced Flight Vision Systems, and AC 20–167, Airworthiness Approval of Enhanced Vision System, Synthetic Vision System, Combined Vision System, and Enhanced Flight Vision System Equipment to incorporate the provisions of this final rule. AC 90–106A contains guidance for the operational approval of EFVS, and AC 20–167A specifies a means of compliance that may be used to obtain airworthiness approval for EFVS.

C. Summary of the NPRM

On June 11, 2013, the FAA published an NPRM titled ''Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems,'' 78 FR 34935. The comment period was initially scheduled to close on September 9, 2013. Dassault Aviation submitted a request to extend the NPRM comment period to October 15, 2013, stating that it needed additional time to evaluate and prepare comments for the NPRM, draft AC 90–106A, and draft AC 20–167A, all of which are directly related. On September 6, 2013, the FAA published a notice in the **Federal Register** extending the NPRM comment period to October 15, 2013, to coincide with the close of comment period for draft AC 90–106A and draft AC 20–167A. ''Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems; Extension of Comment Period,'' 78 FR 54790.

The regulatory evaluation associated with the NPRM was not posted to the docket prior to the close of the comment period. Therefore, to ensure that the public had the opportunity to provide comments specifically on the regulatory evaluation posted in the docket, the FAA published a notice in the **Federal Register** on August 20, 2015, reopening the comment period for 30 days to allow for comments on the regulatory evaluation only. ''Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems; Reopening of Comment Period,'' 80 FR 50587.

In the NPRM, the FAA proposed to—

- More fully define the components of an EFVS and provide a definition of the term ''EFVS operation'' in § 1.1.
- Establish airworthiness standards for vision systems with a transparent display surface located in the pilot's outside field of view in §§ 23.773, 25.773, 27.773, and 29.773.
- Require training and an endorsement for EFVS operations in § 61.31(l).
- Require recent flight experience or a proficiency check for a person conducting an EFVS operation or acting as pilot in command (PIC) during an EFVS operation in § 61.57(i).
- Re-designate § 91.175(l) and (m) as § 91.176(b). The FAA proposed to place all EFVS regulations contained in part 91, except those pertaining to Category II and Category III operations, in a single new section for organizational and regulatory clarity.
- Permit EFVS to be used in lieu of natural vision to continue descending below 100 feet above the touchdown zone provided certain equipment, operating, visibility, and visual reference requirements were met.
- Permit an EFVS to be used to identify the visual references required to continue an approach below the authorized DA/DH on Category II and Category III approaches conducted under § 91.189 that provide and require the use of a DA/DH.
- Add § 91.176 to the list of rules subject to waiver in § 91.905.
- Amend §§ 121.613 and 121.615 to permit an EFVS-equipped aircraft to be dispatched or released when the visibility was forecast or reported to be below authorized minimums for a destination airport.
- Permit a pilot conducting an EFVS operation in accordance with § 121.651 to continue an approach past the FAF, or begin the final approach segment of an instrument approach procedure, when the weather was reported to be below authorized visibility minimums. Proposed § 121.651 also would have permitted EFVS-equipped part 121 operators to conduct EFVS operations in accordance with § 91.176 and their operations specifications issued for EFVS operations.
- Permit flight release under §§ 125.361 and 125.363 for EFVS-equipped aircraft when weather reports or forecasts indicated that arrival weather conditions at the destination airport would be below authorized minimums.
- Permit the pilot of an EFVS-equipped aircraft to execute an instrument approach procedure when the weather is reported below authorized visibility minimums under §§ 125.325 and 125.381. Proposed § 125.381 also would have permitted EFVS-equipped part 125 operators to conduct EFVS operations in accordance with § 91.176 and their operations specifications.
- Permit flights in EFVS-equipped aircraft to be initiated under § 135.219 when weather reports or forecasts indicated that arrival weather conditions at the destination airport would be below authorized minimums.
- Permit the pilot of an EFVS-equipped aircraft to initiate an instrument approach procedure under § 135.225 when the reported visibility was below the authorized visibility minimums for the approach. Proposed § 135.225 also would have permitted EFVS-equipped part 135 operators to conduct EFVS operations in accordance with § 91.176 and their operations specifications issued for EFVS operations.
- Make additional related and conforming amendments.

In the NPRM, the FAA proposed performance-based requirements not limited to a specific sensor technology. The FAA intended to accommodate future developments in real-time sensor technologies and maximize the benefits of advanced flight deck systems. The final rule is consistent with the agency's Next Generation Air Transportation System (NextGen) goals of increasing access and throughput during low visibility operations.

The operating requirements of the proposal only addressed enhanced flight vision systems that utilize a real-time image of the external scene topography. The proposed operating requirements did not address synthetic vision, which uses a computer-generated image of the external scene topography from the perspective of the flight deck, derived from aircraft attitude, a high precision navigation solution, and a database of terrain, obstacles and relevant cultural features. The airworthiness standards proposed in §§ 23.773, 25.773, 27.773, and 29.773, however, addressed synthetic vision systems (SVS) with a transparent display surface located in the pilot's outside field of view because the airworthiness standards apply to more than enhanced flight vision systems; they apply to all transparent display surfaces located in the pilot's outside field of view.

Finally, the NPRM did not address the use of EFVS for takeoff because the FAA can authorize these operations through existing processes. Section 91.175(f) already provides a means for persons conducting operations under parts 121, 125, 129, or 135 to obtain authorization for lower than standard takeoff minimums, which could include the use of EFVS. Additionally, the regulations do not prescribe civil airport takeoff minimums for part 91 operators (other than part 91subpart K operators) as discussed in section III.C.2.h of this preamble.

D. General Overview of Comments

The FAA received comments from 34 commenters. The commenters consisted of 16 original equipment manufacturers (OEMs), five industry associations, several operators, an aircraft management service, an aerospace consulting company, a standards organization, and several individuals. All but one commenter generally supported the proposed changes. Three commenters supported the proposal with no changes, and the remaining 30 commenters generally supported the proposal with 171 comments containing questions, concerns, and suggested changes.

A number of commenters stated that they support the FAA's intent to better leverage EFVS capabilities by providing a performance-based regulation for existing and evolving EFVS technology. One commenter stated that future improvements in EFVS sensor technologies may enable additional performance-based operations under the FAA's proposal, and others commented that they believe EFVS technology has tremendous potential for increasing safety and enhancing airspace utilization within the NAS while creating economic benefits to the public. Several industry associations said they strongly support the FAA creating and supporting a flexible regulatory structure that encourages innovation and improves operational efficiencies. Several OEMs specifically supported the FAA's proposal to eliminate the need to issue special conditions by revising the pilot compartment view certification requirements in the airworthiness standards of parts 23, 25, 27, and 29.

Specific changes recommended by the commenters as well as the concerns expressed by one individual who opposed the FAA's proposal are discussed in detail in ''Section III. Discussion of Final Rule and Public Comments.''

III. Discussion of Final Rule and Public Comments

A. Revise the Definition for EFVS and Add a Definition for EFVS Operation (§ 1.1)

Section 1.1 defines enhanced flight vision system (EFVS) to mean ''an installed aircraft system which uses an electronic means to provide a display of the forward external scene topography (the natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as forward-looking infrared, millimeter wave radiometry, millimeter wave radar, or low-light level image intensification. An EFVS includes the display element, sensors, computers and power supplies, indications, and controls.'' This definition differs from what was proposed in the NPRM, because the FAA is not including the equipment requirements in the definition, which proposed ''The EFVS sensor imagery and required aircraft flight information and flight symbology are displayed on a head up display, or an equivalent display, so that they are clearly visible to the pilot flying in his or her normal position with the line of vision looking forward along the flight path.'' The proposed definition would have inappropriately embedded requirements.

The definition of EFVS also differs from what was proposed in the NPRM because the FAA is not using the word ''applicable'' to describe the natural or manmade features that an EFVS may display. Upon further reflection, the FAA has decided that the word ''applicable'' could generate confusion because an EFVS cannot differentiate between applicable and non-applicable items. An EFVS simply senses and displays items. The FAA is, however, adopting the proposed relocation to § 1.1 of the descriptive material from § 91.175(m)(3).

Garmin International suggested that the FAA revise the definition of EFVS by replacing ''EFVS sensor imagery'' with ''EFVS image'' or ''EFVS sensor imagery and aircraft flight symbology.'' In other words, Garmin was concerned that the term ''sensor imagery,'' as used in the definition, might be misinterpreted to mean only the image from the imaging sensor without encompassing the remaining EFVS elements. Garmin also believed its suggested revision would make the proposed definition in § 1.1 more consistent with proposed §§ 91.176(a)(1)(i)(B), 91.176(a)(1)(i)(E), and 91.176(a)(1)(ii).

The FAA is not adopting the proposed equipment requirements in the definition of EFVS, because § 91.176(a)(1)(i)(B) already contains these requirements.[4] This decision is not intended to be a substantive change as the FAA is relying on the equipment requirements in § 91.176(a)(1)(i)(B) to replace the requirements it had proposed in the definition of EFVS. Definitions only describe what something is, not what it must do. Accordingly, definitions should not contain substantive regulatory provisions, such as regulatory requirements. If the FAA were to adopt requirements in the definition of EFVS, the FAA would not be able to grant an exemption from those requirements in the future because the FAA's regulations describe an exemption as a request for relief from the requirements of a regulation.[5] Nor would the FAA be able to grant a waiver from those requirements, if they were in the definition, because § 91.903 permits the FAA to grant a waiver from any rule listed in § 91.905 and a definition is not a rule. Therefore, § 1.1 defines the EFVS to which § 91.176 applies and § 91.176 contains the regulatory requirements.

This change obviates addressing Garmin's concern because the definition no longer contains the terminology Garmin sought to revise. However, as a result of Garmin's comment, the FAA discovered that § 91.176(a) and (b), as proposed, did not contain specific references to ''aircraft flight information,'' as had been proposed in the definition of EFVS in § 1.1. Accordingly, the FAA is revising paragraphs (a) and (b) of § 91.176 to include ''aircraft flight information'' where appropriate.

Section 1.1 defines an ''EFVS operation'' as an operation in which visibility conditions require an EFVS to be used in lieu of natural vision to perform an approach or landing, determine enhanced flight visibility, identify required visual references, or conduct the rollout. This definition differs slightly from the NPRM, where the FAA proposed to define ''EFVS operation'' as an operation in which an EFVS is required to be used to perform such tasks. This change clarifies that not all operations in which a pilot uses an EFVS constitute an EFVS operation under the definition. Rather, an EFVS

[4] Section 91.176(a)(1)(i)(B) requires an EFVS to present EFVS sensor imagery, aircraft flight information, and flight symbology on a head up display, or an equivalent display, so that they are clearly visible to the pilot flying in his or her normal position with the line of vision looking forward along the flight path.

[5] 14 CFR 11.15

operation is an operation that a pilot would not be permitted to perform without the use of an EFVS. For example, a person may not descend below the DA/DH using natural vision if the flight visibility using natural vision is less than what is required by the instrument approach procedure being flown. That person may, however, use an EFVS in lieu of natural vision to descend below the DA/DH if the enhanced flight visibility is not less than what is required by the instrument approach procedure.

Boeing commented that the FAA stated in the preamble that while an EFVS can provide situation awareness in any phase of flight, such use would not constitute an EFVS operation unless an EFVS was required in lieu of natural vision to perform any visual task associated with approach, landing, and rollout. Boeing recommended that the FAA consider not just approach, landing, and rollout as part of an EFVS operation but approach, landing, and/or rollout to clarify that EFVS might be used for one segment of the terminal operation, but not other segments.

The FAA agrees but Boeing's concern is addressed in the definition of ''EFVS operation'' in § 1.1.

B. Consolidate EFVS Requirements in Part 91 in a New Section (§ 91.176)

The FAA created a new section, § 91.176, for the EFVS regulations to ensure organizational and regulatory clarity. As the FAA originally proposed in the NPRM, § 91.176(a) contains the requirements for EFVS operations to touchdown and rollout, and § 91.176(b) contains the requirements, which were previously located in § 91.175(l) and (m), for EFVS operations to 100 feet above the TDZE. Boeing recommended that the FAA move the regulations for EFVS operations to 100 feet above the TDZE from § 91.176(b) to § 91.176(a), and move the regulations for EFVS operations to touchdown and rollout from § 91.176(a) to § 91.176(b). Boeing believed this format would facilitate reading and understanding the changes, because the existing EFVS rules, which were previously located in § 91.175(l) and (m), would be placed first.

The FAA disagrees with Boeing and is retaining the format as originally proposed. The FAA placed the new rules for EFVS operations to touchdown and rollout in § 91.176(a) because it believes that operators will eventually conduct the majority of EFVS operations to touchdown and rollout. Placing these regulations in § 91.176(a) facilitates quick reference. The FAA placed the rules for EFVS operations to 100 feet above the TDZE, which were previously located in § 91.175(l) and (m), in § 91.176(b) because it expects operators will use these rules less frequently in the future. Furthermore, the regulations for EFVS operations to touchdown and rollout are more extensive than the regulations for EFVS operations to 100 feet above the TDZE. By placing the more extensive rules in § 91.176(a), the FAA is able to cross reference the equipment requirements of § 91.176(a)(1)(i)(A)–(a)(1)(i)(F) in § 91.176(b)(1)(ii), thereby eliminating significant redundancy.

C. Equipment, Operating, and Visibility and Visual Reference Requirements for EFVS Operations to Touchdown and Rollout (§ 91.176(a))

1. Equipment Requirements

a. Real-Time Imaging Sensors

Section 91.176(a)(1)(i)(A) requires, as originally proposed in the NPRM, that an EFVS have an electronic means to provide a display of the forward external scene topography, which consists of the applicable natural or manmade features of a place or region, especially in a way to show their relative positions and elevation, through the use of imaging sensors, such as forward-looking infrared, millimeter wave radiometry, millimeter wave radar, or low-light level image intensification. Airbus and Thales commented on the list of imaging sensors. Airbus suggested that the FAA use an ellipsis at the end of the list to emphasize that it is not exhaustive, and Thales proposed that the FAA add laser imaging detection and ranging (LIDAR) to the list.

The FAA finds that the use of the term ''such as'' after the reference to imaging sensors indicates the list of examples is non-exhaustive. However, based on the concerns raised by the commenters, the FAA has revised the definition to clarify that imaging sensors includes but is not limited to the list of examples in §§ 1.1 and 91.176(a)(1)(i)(A).

b. Head Up Presentation Requirement for EFVS Operations

As originally proposed, § 91.176(a)(1)(i)(B) requires that an EFVS present the sensor imagery, aircraft flight information, and flight symbology on a head up display, or an equivalent display, so that the imagery, information and symbology are clearly visible to the pilot flying in his or her normal position with the line of vision looking forward along the flight path.[6] This requirement applies to both EFVS operations to touchdown and rollout and EFVS operations to 100 feet above the TDZE.[7]

Several commenters expressed concerns about the requirement to present sensor imagery, aircraft flight information, and flight symbology on a head up display (HUD). Honeywell commented that the FAA is unnecessarily restricting the goals of increased access, efficiency, and throughput in low visibility conditions by this requirement. Honeywell agreed that there is value in requiring EFVS information to be displayed on a HUD for EFVS operations to touchdown and rollout but believes EFVS operations to 100 feet above the TDZE should allow for head down presentations.[8] FedEx Express, Gulfstream Aerospace Corporation (Gulfstream), Honeywell, and General Aviation Manufacturers Association (GAMA) commented that the FAA should not limit an equivalent display to a head up presentation. Instead, it should consider all vision systems containing the required sensor imagery and flight symbology that meet an acceptable level of performance and safety for the intended operation. One commenter suggested that an acceptable location for an EFVS display, or an equivalent display, was in the normal line-of-sight established at 15 degrees below the horizontal plane, +/− 15 degrees for the vertical field-of-view, or +40 degrees up and -20 degrees down as a maximum deviation.

Commenters were also concerned that the head up presentation requirement might have limiting effects on future technology. Honeywell contended that the FAA's HUD requirement for EFVS does not allow for new technologies and new ways of presenting information that could be developed in the future. It also believed that alternative means for displaying the sensor imagery and flight information have already been shown to satisfy the necessary performance criteria. Additionally, several commenters stated that the FAA is unnecessarily limiting future aircraft or

[6] Section 91.175(m) previously contained this requirement.

[7] Section 91.176(b)(1)(ii) requires the EFVS to meet the requirements of § 91.176(a)(1)(i) with the exception of the flare prompt, flare guidance, and height above ground level requirements.

[8] Honeywell asserted that § 91.176(a) and (b) describe two different operations that do not necessarily require the same equipment. Honeywell explained that operators may currently perform Category II ILS approaches down to 100 feet above the TDZE using head down primary displays. Honeywell's comments are out of scope as the FAA did not propose to change the existing head-up display, or equivalent display, requirements. Furthermore, the FAA notes that EFVS operations to 100 feet above the TDZE and Category II ILS approaches down to 100 feet above the TDZE are two distinct operations.

systems that may be capable of meeting performance-based criteria appropriate for EFVS operations, such as vision systems that use head down displays, high-speed aircraft that have reduced or limited front window designs, or unmanned aerial systems (UASs). GAMA recommended that the FAA create a performance-based framework rather than making EFVS dependent only on HUD technology. It believes this would not only permit different technology solutions but would allow manufacturers to design an EFVS that enables operations to different performance minima.

The FAA is not adopting these recommendations because they are outside the scope of this rulemaking. The FAA did not propose to change the existing head-up display, or equivalent display, requirements under § 91.175(m).[9] Rather, the FAA proposed to expand EFVS operations to touchdown and rollout using the existing operational construct in § 91.175(l) and (m). More specifically, the FAA proposed to apply all the equipment requirements of the EFVS regulations found in § 91.175(m), including the head-up presentation requirement, to EFVS operations conducted to touchdown and rollout. As a result, others have not had an opportunity to comment on the use of HDDs to conduct EFVS operations. While the FAA is not issuing an SNPRM at this time to propose the use of HDDs under § 91.176, the FAA notes that it may grant waivers to OEMs from the applicable sections of § 91.176 to enable OEMs to use HDDs during EFVS operations for the purpose of research and development. After the FAA has had sufficient time to gather information and analyze the safety of HDDs used to conduct EFVS operations in the national airspace system, the FAA may contemplate future rulemaking.

c. EFVS Terminology

A couple of commenters sought clarification and alignment of the EFVS terminology used in § 91.176.

Under § 91.176(a)(1)(i), a U.S.-registered aircraft must have an operable EFVS that meets the applicable airworthiness requirements.[10] The terminology in this requirement differs slightly from the NPRM, which would have required an operable EFVS that had an FAA type design approval certified for EFVS operations. Dassault Aviation requested that the FAA clarify the terms ''approved EFVS,'' ''certified EFVS,'' and ''EFVS-equipped operator.'' The FAA finds it unnecessary to clarify the terms ''approved EFVS'' and ''EFVS-equipped operator'' because it did not specifically use these terms in the proposed regulations. Nor is the FAA using these terms in this final rule. The FAA also finds it unnecessary to clarify the term ''certified EFVS'' because it has deleted the word ''certified'' from proposed § 91.176(a)(1)(i), (a)(3)(i), and (b)(3)(i). Instead, the FAA is using the phrase ''meets the applicable airworthiness requirements.'' [11]

d. EFVS Equipment Requirements for Foreign-Registered Aircraft

Under § 91.176(a)(1)(i) and (b)(1)(i), an aircraft must be equipped with an operable EFVS that meets the applicable airworthiness requirements. The requirements in paragraphs (a)(1)(i) and (b)(1)(i) differ from the NPRM based on a comment from Thales and the ICAO standards that were adopted after the NPRM was published. Additionally, the NPRM proposed § 91.176(b)(1)(i) as § 91.176(b)(1)(iii).[12]

Thales commented that an EFVS-equipped foreign-registered aircraft that does not have an FAA type design approval, but has been certified by its own Civil Aviation Authority (CAA) to operate with an EFVS, should not have to demonstrate compliance to the FAA regulations. Thales stated that this requirement is not always feasible as a foreign CAA may not be able to correctly interpret the FAA regulations. In addition, it stated that this requirement is not consistent with International Civil Aviation Organization (ICAO) standards without citing the specific standards at issue.[13] Thales asserted that a foreign operator operating in the United States should only have to demonstrate that it has been authorized to operate the EFVS in accordance with the rules of its own CAA and that the FAA should recognize them as being compliant with FAA rules without requesting a specific compliance demonstration.

The FAA agrees that it should not require an EFVS-equipped foreign-registered aircraft to have an EFVS that meets the FAA's certification requirements if that EFVS has been certified by the foreign-registered aircraft's own CAA in accordance with ICAO Annex 6. ICAO Annex 6 defines an enhanced vision system (EVS) as a ''system to display electronic real-time images of the external scene achieved through the use of image sensors.'' ICAO's definition of EVS encompasses the FAA's definition of EFVS. Accordingly, the ICAO Annex 6 standards on EVS apply to EFVS.

Annex 6, Part I, Standard 6.23.2 requires the State of the Operator, in approving the operational use of EVS, to ensure that the equipment meets the appropriate airworthiness certification requirements. Annex 6, Part II, Standard 2.4.15.2 requires the State of Registry, in approving the operational use of EVS, to ensure that the equipment meets the appropriate airworthiness certification requirements.[14] Based on the FAA's interpretation of these standards, if an EFVS-equipped foreign-registered aircraft has an EFVS that has been approved by the State of the Operator or the State of Registry to meet the CAA's airworthiness certification requirements, the FAA cannot subsequently require that foreign-registered aircraft's EFVS to meet U.S. certification requirements.[15]

Accordingly, paragraphs (a)(1)(i) and (b)(1)(i) now require an aircraft to be equipped with an operable EFVS that meets the applicable airworthiness requirements. By using the phrase ''meets the applicable airworthiness requirements,'' the requirement applies to both U.S.-registered aircraft and foreign-registered aircraft. The U.S.-registered aircraft must be equipped with an EFVS that has demonstrated

[9] The FAA notes that commenters raised these issues in 2004. The FAA disagreed that it should permit the presentation of EFVS information on head down displays, and noted that EFVS information must be presented on a head up display, or an equivalent display, so that the imagery, aircraft flight information, and flight symbology are clearly visible to the pilot flying in his or her normal position with the line of vision looking forward along the flight path. Please see the previous disposition of comments in ''Enhanced Flight Vision Systems,'' 69 FR 1620 (Jan. 9, 2004).

[10] *See* AC No. 20–167A, *Airworthiness Approval of Enhanced Vision System, Synthetic Vision System, Combined Vision System, and Enhanced Flight Vision System Equipment* (providing guidance for obtaining airworthiness approval for enhanced and synthetic vision systems in aircraft).

[11] The disposition of Thales' comment in the next section of the preamble explains why the FAA is using the phrase ''meets the applicable airworthiness requirements.''

[12] The FAA restructured the requirements in proposed § 91.176(b)(1)(i)–(iii) to be more consistent with § 91.176(a)(1)(i) for organizational clarity.

[13] The FAA believes that Thales is referring to ICAO Annex 6, Part I, 6.23.2 and ICAO Annex 6, Part II, 2.4.15.2, which are discussed in the following paragraph. The FAA notes that ICAO adopted these standards after the NPRM was published on June 11, 2013.

[14] ICAO adopted Annex 6, Part I, Standard 6.23.2 and Annex 6, Part II, Standard 2.4.15.2 after the FAA issued the NPRM on June 11, 2013,

[15] The FAA could have required this prior to the adoption of Annex 6, Part I, Standard 6.23.2 and Annex 6, Part II, Standard 2.4.15.2, which explains why § 91.175(l)(7) previously required a foreign-registered aircraft to have an EFVS that complies with all of the EFVS requirements of 14 CFR and why the FAA proposed to retain the requirement in the NPRM.

compliance with the applicable airworthiness requirements by issuance of a design approval through the type certification process (*i.e.,* type certificate, amended type certificate, or supplemental type certificate).[16] The foreign-registered aircraft must be equipped with an EFVS that has been approved by either the State of the Operator or the State of Registry to meet the appropriate airworthiness certification requirements in accordance with ICAO Annex 6.

While a foreign-registered aircraft with an EFVS certified to a foreign airworthiness standard may operate within the United States without obtaining an FAA type design approval and without meeting the FAA's certification requirements, that EFVS-equipped foreign-registered aircraft must meet all of the requirements in § 91.176, including the equipment requirements, in order to be used in EFVS operations in the United States. This requirement is consistent with ICAO standards. Article 11 of the Convention on International Civil Aviation requires aircraft subject to its provisions and operating within the territory of a contracting State to comply with the applicable laws and regulations enacted by that State. ICAO Annex 6, Part I, Chapter 3 states that an operator shall meet and maintain the requirements of the States in which the operations are conducted and that an operator shall ensure that all pilots are familiar with the laws, regulations and procedures pertinent to the performance of their duties prescribed for the areas to be traversed.[17] Similarly, ICAO Annex 6, Part II, Chapter 2.1 requires the PIC to comply with the laws, regulations, and procedures of those States in which operations are conducted and to be familiar with the laws, regulations, and procedures pertinent to the performance of his or her duties prescribed for the areas to be traversed.[18] ICAO Annex 2, Standard 2.1.1 states that the rules of the air apply to aircraft of a contracting State to the extent they do not conflict with the rules published by the State having jurisdiction over the territory flown. The FAA also notes that certain foreign authorities have imposed requirements on operators of U.S.-registered aircraft in their airspace that are in addition to those established by the FAA to permit the conduct of EFVS operations.

[16] Section 91.175(l)(7) previously required an EFVS to have an FAA type design approval.

[17] ICAO Annex 6, Part I, Standards 3.1.1 and 3.1.2.

[18] ICAO Annex 6, Part II, Standards 2.1.1.1 and 2.1.1.2.

e. Line of Vision and Conformal Display

Section 91.176(a)(1)(i)(B) states, as originally proposed, that an EFVS must present EFVS sensor imagery, aircraft flight information, and flight symbology on a head up display, or an equivalent display, so that the imagery, information and symbology are clearly visible to the pilot flying in his or her normal position with the pilot's line of vision looking forward along the flight path.

Boeing commented that a sensor will likely be hard-mounted to the airframe such that it is pointing straight along the longitudinal axis. It also noted that a HUD is aligned with the longitudinal axis of the aircraft, and when someone flies a ''crabbed'' approach the flight path does not coincide with the longitudinal axis. Therefore, Boeing recommended that the FAA revise the rule from ''looking forward along the flight path'' to ''looking forward along the aircraft longitudinal axis with adequate downward field of view to accommodate sight along the normal flight path vector.'' Boeing noted that it is currently allowed to ''ghost'' symbology on the HUD that appears outside the HUD field of view, and that this capability should be preserved.

The FAA is not adopting Boeing's recommendation because it could unnecessarily restrict new technology that becomes available in the future. The EFVS requirements are performance-based, with means of compliance contained and updated as necessary in advisory circular documents. While the FAA recognizes that the aircraft's flight path may not necessarily coincide with the aircraft's longitudinal axis, the phrase ''clearly visible to the pilot flying in his or her normal position with the line of vision looking forward along the flight path'' is intended to ensure that the EFVS provides a head up presentation and will accommodate Boeing's recommendation.

As proposed in the NPRM, § 91.176(a)(1)(i)(C) requires an EFVS to present the displayed EFVS sensor imagery, attitude symbology, flight path vector (FPV), and flight path angle reference cue (FPARC), and other cues, which are referenced to the EFVS sensor imagery and external scene topography, so that they are aligned with, and scaled to, the external view. The term ''referenced to'' is used to reflect the FAA's expectation that the vision system imagery and certain symbology use the same coordinate reference system as the pilot's perspective outside view of the world. This is because the pilot uses the vision system imagery and symbology in coordination with, and sometimes in very low visibility as a substitute for, the outside view of the world, including the terrain, features of the runway environment, and topology in general.

Rockwell Collins asked whether it could conduct EFVS operations under the rule if the ''Flight Path Symbol'' became limited, and therefore nonconformal, to the EFVS image due to severe crosswinds or blowing snow conditions.

The ability to perform an EFVS operation with a nonconformal FPV depends on a variety of factors, such as the particular EFVS and the type and severity of the limiting conditions. Because the EFVS is the primary means by which the pilot will maneuver the airplane to land, conditions that cause the FPV to become field-of-view limited, and therefore nonconformal, could make the display unacceptable for landing. An applicant should demonstrate EFVS operations on a variety of instrument approach procedures and in various wind conditions with pilot-in-the-loop simulation and a flight test, if possible, to establish the operational effects that limiting conditions might have on landing with an EFVS. The FAA may impose limitations in the Airplane Flight Manual (AFM) or Airplane Flight Manual Supplement (AFMS) for conditions where the required level of performance is not satisfactorily demonstrated.

f. Flight Path Angle Reference Cue (FPARC)

Pursuant to § 91.176(a)(1)(i)(D), the EFVS must display the FPARC with a pitch scale, and the FPARC must be selectable by the pilot to the desired descent angle for the approach and be suitable for monitoring the vertical flight path of the aircraft. The FAA made changes to this paragraph from what it originally proposed based on concerns raised by Boeing.

Boeing asserted that the proposed requirement implied that the pitch scale was selectable, not the FPARC. Boeing commented that the FAA should revise § 91.176(a)(1)(i)(D) to clarify that the FPARC must be selectable by the pilot to the desired descent angle for the approach being flown. Boeing also recommended that the provision indicate that the appropriate descent angle associated with the approach be selectable either by the pilot or automatically by the flight management computer.

The FAA agrees and is revising § 91.176(a)(1)(i)(D) accordingly. However, the FAA does not consider it necessary to specify whether the

descent angle selected is accomplished manually or automatically. The rule does not prohibit the automatic setting of the flight path angle; however, the pilot must have the ability to either manually select the flight path angle or to manually override the automatic setting.

g. Requirement To Display Height Above Ground Level

Section 91.176(a)(1)(i)(B) specifies an equipment requirement for EFVS operations to touchdown and rollout, which requires an EFVS to display height above ground level, such as that provided by a radio altimeter or other device capable of providing equivalent performance. Dassault Aviation asked whether the FAA could provide an example of such a device.

The FAA is not providing an example of an equivalent device, because it intends this rule to be a performance based requirement that is not limited to one device and that could accommodate future advances in technology. The FAA notes, however, that such a device must be capable of equivalently performing the function of a radio altimeter, which is to provide an accurate and reliable indication of aircraft height above the ground.

h. Requirement To Display Flare Prompt or Flare Guidance

For EFVS operations to touchdown and rollout in aircraft other than rotorcraft, § 91.176(a)(1)(i)(B) requires the EFVS to display flare prompt or flare guidance. This requirement reflects a slight change from what was proposed in the NPRM, where the FAA would have required the display of flare prompt or flare guidance for all aircraft, for achieving acceptable touchdown performance.

Helicopter Association International (HAI) commented that rotorcraft certificated under parts 27 and 29 should be excluded from the requirement to display flare prompt or flare guidance, because parts 27 and 29 do not require flare prompt or flare guidance based on lower operating speed and maneuverability. The FAA agrees for the reasons the commenter provided. Accordingly, § 91.176(a)(1)(i)(B) now excepts rotorcraft from the requirement.

Boeing and Airbus also raised concerns about the definition of acceptable touchdown performance. Boeing stated that the FAA should define acceptable touchdown performance in guidance material, because it was unsure whether the term meant landing in the touchdown zone, compliance with landing performance specified in AC 120–28D, equivalency to the AIII mode of a head up guidance system, or compliance with some other performance standard. Boeing also suggested that the FAA address quantitative standards in guidance material to ensure an applicant or designer can demonstrate compliance with the regulatory requirement. Airbus provided a similar comment, suggesting that the FAA provide pass/fail criteria for acceptable touchdown performance during an EFVS operation using flare prompt or flare guidance.

The FAA is not adopting a requirement ''as appropriate, for acceptable touchdown performance'' under § 91.176(a)(1)(i)(B) because the term ''acceptable touchdown performance'' is both vague, as identified by the commenters, and extraneous. ''Acceptable touchdown performance'' is not a regulatory term to date. Nor is it defined in the regulations. Furthermore, § 91.176(a)(1)(i)(F) already requires an EFVS to display characteristics, dynamics, and cues that are suitable for manual control of the aircraft to touchdown in the touchdown zone of the runway of intended landing. Because paragraph (a)(1)(i)(F) requires the flare cue, *i.e.* flare prompt or flare guidance, to be suitable for manual control of the aircraft to touchdown in the touchdown zone of the runway of intended landing, it is therefore unnecessary to require an EFVS to display flare prompt or flare guidance for achieving ''acceptable touchdown performance'' in paragraph (a)(1)(i)(B). Each applicant for a type design approval must demonstrate touchdown performance for their particular EFVS implementation using either flare prompt or flare guidance. AC 20–167, paragraph 6–2(f)(4) specifically discusses landing performance demonstrations for EFVS operations conducted to touchdown and rollout and provides a means of demonstrating compliance for applicants or designers.

Boeing further commented that the FAA should provide touchdown requirements that are strictly performance-based and asserted that the FAA should not require flare guidance or flare cue for a particular EFVS implementation if the pilot can achieve acceptable sink rate and position without them. The FAA disagrees. The FAA finds it necessary to provide the pilot with additional information to conduct a flare maneuver during conditions of low visibility typically encountered during EFVS operations to touchdown and rollout. The FAA based the requirement in § 91.176(a)(1)(i)(B) on RTCA DO–315A and incorporated it in the interest of safety to ensure continued safe approaches and landings in low visibility conditions.[19] The FAA notes that by requiring flare prompt or flare guidance for EFVS operations to touchdown and rollout, it provides manufacturers flexibility to use either means to achieve acceptable touchdown performance.

Airbus and Thales raised concerns about the requirement to display flare prompt or flare guidance when using autoland during EFVS operations. Airbus commented that EFVS operations using autoland should be possible, but the requirement to display flare prompt or flare guidance is not relevant when using it. Thales stated that the FAA should mandate flare prompt or flare guidance for manual operations using the EFVS to achieve acceptable touchdown performance, but it should not require an EFVS to display flare prompt or flare guidance during an approach using EFVS that is performed with a certified autoland function.

The FAA disagrees with the commenters. All autoland systems to date have been approved based on performance demonstrations at runways with Category III approach infrastructure. If conducting an autoland approach with any other kind of runway infrastructure (*i.e.,* less than Category III), the visual conditions must be sufficient for the pilot to monitor the operation and, if necessary, take immediate manual control. EFVS provides enhanced flight visibility to compensate for what the pilot cannot see unaided. In the case of an EFVS landing, the EFVS must be equipped with an approved flare prompt or flare guidance as part of the required visual information to be eligible for EFVS operational approval to land. For this reason, even if the crew is approved to use autoland during an EFVS operation, the EFVS must be equipped with and must display all of the required features.

i. Pilot Monitoring Display

When a minimum flightcrew of more than one pilot is required, § 91.176(a)(1)(ii) requires the aircraft to be equipped with a display that provides the pilot monitoring[20] with

[19] RTCA is a private, not-for-profit association. It was founded in 1935 as the Radio Technical Commission for Aeronautics to advance the art and science of aviation and aviation electronic systems for the benefit of the public. The organization functions as a Federal Advisory Committee and develops consensus-based recommendations on contemporary aviation issues. The organization's recommendations are often used as the basis for government and private sector decisions as well as the foundation for many FAA documents. For more information, see *http://www.rtca.org.*

[20] The term ''pilot monitoring'' refers to the individual who is sitting at the pilot controls and

EFVS sensor imagery Also, as proposed, the pilot monitoring display may provide symbology but any symbology displayed may not adversely obscure the sensor imagery of the runway environment. However, the FAA is not adopting the requirement for the pilot monitoring display to be located within the maximum primary field of view [21] of the pilot monitoring. This departure from what the FAA originally proposed arose as a result of the FAA's own continued review of the proposal. The FAA is also not adopting the requirement for the EFVS sensor imagery and aircraft flight symbology to be displayed to the pilot monitoring on a HUD or an equivalent display for certain future EFVS operations at the Administrator's discretion. This departure from what the FAA originally proposed arose out of comments.

Upon further reflection, the FAA is not adopting the requirement for the PM display to be located in the ''maximum primary field of view'' because the term ''maximum primary field of view'' is not used or defined in the regulations to-date and the proposed location requirement is unnecessary. When a PM display is installed on an aircraft, it must meet the arrangement and visibility requirements in §§ 23.1321, 25.1321, 27.1321, and 29.1321, which will achieve the same objective as the proposed requirement by requiring the PM display to be located so that any pilot seated at the controls can monitor the airplane's flight path and the instruments with minimum head and eye movement. The FAA will also require aircraft that pre-date §§ 23.1321, 25.1321, 27.1321, and 29.1321 to meet the arrangement and visibility requirements in those sections for the installation of PM displays. Because the airworthiness requirements of §§ 23.1321, 25.1321, 27.1321, and 29.1321 will already ensure the proper placement of a PM display, the FAA finds it unnecessary to adopt a location requirement in the operating rule.

Several commenters shared concerns about the provision in proposed § 91.176(a)(1)(ii) that would have allowed the Administrator to require a head up display, or equivalent display, for the pilot monitoring based upon the EFVS operation to be conducted. Boeing noted that designers and operators needed to know the conditions under which the FAA might require a head up display for the pilot monitoring. Similarly, Airbus asked the FAA for clarification, and Thales suggested that the FAA develop criteria to define when a pilot monitoring had to have a head up display. Additionally, Bombardier Aerospace was concerned that, while the FAA intended the language to provide for future technological advancements, the agency could immediately apply the requirement to current installations where it would be impractical to implement.

The FAA agrees with the commenters that the proposal was unclear. The FAA intended to address future EFVS operations and technological advancements; however, based on the confusion surrounding the provision, the FAA has decided not to adopt it. Instead, to facilitate the performance of future EFVS operations, the FAA is adding new § 91.176(a)(4) that states that the Administrator may prescribe additional equipment, operational, and visibility and visual reference requirements to account for specific equipment characteristics, operational procedures, or approach characteristics. These requirements will be specified in an operator's operations specifications, management specifications, or letter of authorization authorizing the use of EFVS. This provision will better facilitate the FAA's ability to respond to future technological developments without causing confusion around the pilot monitoring requirement.

Boeing also commented that the pilot monitoring display requirements should include a horizon line, flight path vector cue, and FPARC in addition to the EFVS sensor imagery. Boeing contended that without this aircraft flight symbology, the pilot monitoring would have no cues with which to judge performance and noted that RTCA DO–315A specifies the additional cues.

During EFVS operations to touchdown and rollout, when a minimum flightcrew of more than one pilot is required, the aircraft must be equipped with a display that provides the pilot monitoring with EFVS sensor imagery. The FAA finds it unnecessary to require additional features on the pilot monitoring display, such as an artificial horizon line, a flight path vector cue, and a FPARC, because the pilot monitoring display requirements are intended only to enable that pilot to see a real time sensor image of the required visual references. Section 91.176(a)(1)(ii) is a minimum requirement, however. Accordingly, it does not preclude OEMs and operators from including additional features, such as those described by the commenters. The FAA notes that any additional features that are displayed on the pilot monitoring display may not interfere with the EFVS image of the required visual references.

Boeing further stated that it was unclear whether the pilot monitoring display had to be a repeater of the display provided to the flying pilot, or an independent system. Sierra Nevada Corporation submitted a similar comment asking the FAA to clarify whether the EFVS sensor imagery required to be provided to the pilot monitoring had to be identical to that provided to the pilot flying on the HUD, or whether the pilot monitoring display could utilize imagery that was augmented by color, symbolic representation of features and obstacles, a synthetic database of features and obstacles, an alternate perspective view such as a top-down view, an alternate EFVS sensor source, or blending.

The FAA intends the regulatory requirement for the pilot monitoring display to be performance based. Accordingly, the provision does not specifically require a repeater display or an independent system. Nor does it preclude the display of imagery that is augmented by features such as those described by Sierra Nevada Corporation. Whether the pilot monitoring display should be a repeater display or an independent system will depend on the operation to be conducted. AC 20–167A contains means of compliance for the pilot monitoring display. The FAA also notes that, as display technology continues to improve, it will evaluate additional display capabilities and features that become available provided the display meets applicable airworthiness requirements.

Rockwell Collins also submitted comments on the pilot monitoring display. It asserted that the FAA should take into account other monitoring methods, such as those used by a pilot monitoring the safe conduct of a Head up Guidance System (HGS)-flown Category III approach, landing, and rollout. Such monitoring methods would not require a second HUD, nor would they require the pilot monitoring display to repeat the HUD symbology.

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monitoring the operation of the aircraft. Historically, the FAA has referred to this individual as the pilot not flying. In 2003, the FAA amended AC 120–71A, Standard Operating Procedures for Flight Deck Crewmembers, and replaced the term ''pilot not flying'' with ''pilot monitoring'' to convey that the pilot not flying should be actively engaged in the safe operation of the aircraft and, as such, should be trained and evaluated in performing active pilot monitoring skills. *See* Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers, 78 FR 67800, 67812 (Nov. 12, 2013) (discussing pilot monitoring duties and training).

[21] Maximum primary field of view is based on the maximum vertical and horizontal visual fields from the design eye reference point. The values for the maximum vertical visual field (relative to normal line-of-sight forward of the airplane) are +40 degrees up and −20 degrees down. The values for the maximum horizontal visual field are +35 degrees left and +35 degrees right. AC 25–11B and AC 20–167A.

For example, a person could use expanded deviation scales based on global positioning system (GPS) to verify alignment with the runway, and ADS–B information to monitor other aircraft and vehicles on the runway. Rockwell Collins also proposed that the requirement identify the items that the pilot monitoring must monitor and assess, rather than indicating the actual equipment the pilot monitoring must use to perform the monitoring tasks, such as a display of EFVS imagery.

The FAA is not adopting Rockwell Collins' recommendations. When a minimum flightcrew of more than one pilot is required, the pilot monitoring must have a display that provides him or her with EFVS sensor imagery. This requirement is necessary because, when the pilot flying relies on EFVS from DA/DH to touchdown and rollout, it cannot be assumed that the pilot monitoring sees anything of the outside environment using natural vision. Providing the pilot monitoring with EFVS sensor imagery supports his or her view of the outside environment, enables confirmation of the required visual references and safe conduct of the approach and landing, and provides common situational awareness between the pilot flying and the pilot monitoring. The FAA notes, however, that the pilot monitoring display is not the only source of flight path information available to the pilot monitoring. The pilot monitoring may use GPS and ADS–B information, as Rockwell Collins suggested, in addition to the EFVS sensor imagery. The FAA further notes that the pilot monitoring should monitor sources of information that he or she would normally monitor during an approach and landing.

j. Applicability of EFVS Provisions to Rotorcraft Operations

The GAMA, HAI, and Eurocopter and American Eurocopter commented that the scope of the NPRM appeared to apply to both fixed-wing airplanes and rotorcraft; however, the technical requirements appear to apply only to fixed wing airplanes. GAMA and Eurocopter and American Eurocopter recommended that the FAA modify § 91.176(a)(1), as proposed in the NPRM, to ensure the equipment requirements accommodated the differences between airplanes and rotorcraft. They also recommended that the FAA consider permitting the use of EFVS in rotorcraft IFR operations, such as wide area augmentation system/localizer performance with vertical guidance (WAAS/LPV) approaches, published instrument approach procedures to heliports, offshore helicopter operations, and point in space instrument approaches.

The FAA notes that this rule does not preclude persons from conducting EFVS operations under IFR in rotorcraft. Section 91.176(a) limits EFVS operations to touchdown and rollout to approaches with a DA/DH and prohibits the pilot from using circling minimums. Currently, there are no instrument approach criteria or procedures that have been developed for straight-in landing operations below DA/DH under IFR to heliports or platforms. If such approach procedures were developed in the future for heliports or platforms, along with appropriate visual reference requirements for rotorcraft operations,[22] persons could conduct EFVS operations to a landing in rotorcraft on these approaches. However, EFVS operations may not be conducted on approaches to a point-in-space followed by a ''proceed VFR'' visual segment, or on approaches designed to a specific landing site using a ''proceed visually'' visual segment.

HAI also commented that the FAA should expand its references to landing and rollout to address the maneuverability of aircraft certificated under parts 27 and 29 and that it should specify ''approach to hover'' and ''hover taxiing.'' The FAA disagrees with the commenter. The FAA finds it unnecessary to expand the terminology in the EFVS regulations to specifically encompass the maneuverability of rotorcraft because it did not intend the terms landing and rollout to restrict persons from conducting EFVS operations in rotorcraft. The FAA also notes that this rule does not address taxi operations. Accordingly, this rule does not apply to hover taxiing.

k. Requirement To Obtain a Certificate of Waiver When Conducting Certain EFVS Operations

Section 91.176(d) states that the requirement to have an EFVS that meets the applicable airworthiness requirements specified in § 91.176(a)(1)(i), (a)(2)(iii), (b)(1)(i), and (b)(2)(iii) does not apply to operations conducted in an aircraft issued an experimental certificate under § 21.191 for the purpose of research and development or showing compliance with regulations provided the Administrator has determined that the operations can be conducted safely in accordance with operating limitations issued for that purpose. This paragraph was added as a result of comments.

The 2004 EFVS regulations, specifically § 91.175(l)(2), required a person to have a certified EFVS in order to use the EFVS in lieu of natural vision to descend below the authorized DA/DH or MDA. Proposed § 91.176 would have required the same. The FAA recognizes, however, that an EFVS used to obtain an FAA type design approval may not yet be certified. To date, a person obtaining an FAA type design approval with an EFVS that has not yet been certified has been required to obtain a certificate of waiver[23] in order to use the EFVS in lieu of natural vision to descend below the DA/DH or MDA during flights prior to type design approval.

FedEx Express, Gulfstream, Elbit Systems of America, Sierra Nevada Corporation, and GAMA commented that the FAA should eliminate the requirement to obtain a certificate of waiver from the EFVS rules in order to demonstrate compliance during EFVS certification flights. Several of these commenters further stated that the FAA should remove the term ''certified'' because the operating rules assume the equipment is certified. Additionally, many commenters felt that the FAA should not require waivers for certification flight tests that are conducted with aircraft in the experimental category.

The FAA acknowledges the commenters' concerns and is revising the EFVS regulations by adding § 91.176(d), which enables persons to conduct EFVS certification flights without obtaining a waiver, provided the Administrator has determined that the operations can be conducted safely in accordance with operating limitations issued for that purpose. The FAA will issue operating limitations when it approves an applicant's program letter describing the flight operations to be conducted and issues the experimental certificate for the purpose of research and development or showing compliance with regulations. The FAA is also adding the exception and a reference to § 91.176(d) to the introductions in § 91.176(a) and (b). The FAA finds that eliminating the waiver requirement, which resulted from the promulgation of § 91.175(l) and (m) in 2004, will streamline the process both for the FAA and for applicants seeking to certify an EFVS. This will be accomplished without a reduction in FAA oversight. The FAA notes, however, that an operator is not relieved from complying with the EFVS operating rules when it places an aircraft in the experimental category; it

[22] The visual reference requirements under § 91.176(a)(3) and (b)(3) were derived from the visual reference requirements under § 91.175(c)(3), which were established for runways.

[23] Section 91.175(l) was a rule subject to waiver under § 91.905.

is only relieved from the requirement to have an EFVS with an FAA type design approval for the purpose of research and development or showing compliance with the regulations. AC 90–106A and AC 20–167A contain guidance material pertaining to the § 91.176(d) exception.

2. Operating Requirements

a. Approaches Permitted for EFVS Operations

Under § 91.176(a), a person conducting an EFVS operation in an aircraft below the authorized DA/DH to touchdown and rollout must conduct the operation on an approach with minimums [24] that include a DA/DH. In the NPRM, the FAA had proposed to permit an EFVS operation below the authorized DA/DH to touchdown and rollout only using a straight-in precision instrument approach procedure or an approach procedure with approved vertical guidance. This change in the final rule arises out of comments asking the FAA to clarify what instrument approach procedures can be used for EFVS operations to touchdown and rollout. This change in language does not constitute a change in operational concept.

Boeing and the Airline Pilots Association (ALPA) objected to proposed § 91.176(a) because it was unclear which approach procedures they could use to conduct EFVS operations. For the reasons discussed in greater detail below, § 91.176(a) no longer states that EFVS operations to touchdown and rollout may be conducted using only straight-in precision instrument approach procedures or approach procedures with approved vertical guidance.

Boeing objected to limiting EFVS operations to ''straight-in'' approaches as defined in the Pilot/Controller Glossary (PCG). Relying on the PCG, Boeing asserted that a straight-in approach applies to an approach with no procedure turn, and a straight-in landing refers to a landing made on a runway aligned within 30 degrees of the final approach course following completion of an instrument approach. Boeing contended that flying a procedure turn should not affect whether someone could conduct EFVS operations. Boeing recommended that EFVS operations to touchdown and rollout be permitted using a ''straight-in landing'' from a precision approach or an approach with approved vertical guidance. Boeing recommended similar revisions to § 91.176(b).

The FAA agrees with Boeing that operators could have concluded from the proposal that a ''straight-in'' instrument approach procedure refers to an approach with no procedure turn. This is because the term ''straight-in approach'' is used differently in the Aeronautical Information Manual (AIM), the PCG, and the United States Standard for Terminal Instrument Procedures (TERPS).[25] The FAA did not intend to limit EFVS operations to touchdown and rollout to instrument approaches where the final approach was begun without first having executed a procedure turn. Therefore, § 91.176(a) now requires that a person must conduct an EFVS operation to touchdown and rollout on an approach with minimums that include a DA/DH. This revision ensures that a person may conduct EFVS operations to touchdown and rollout using precision approaches or approaches with approved vertical guidance regardless of whether the pilot first executes a procedure turn. Furthermore, paragraph (a)(2)(i) clarifies that EFVS operations to touchdown and rollout are not permitted on circling approaches. Adding paragraph (a)(2)(i) eliminates the confusion surrounding the terms straight-in approach and straight-in landing, while achieving the same objective—prohibiting EFVS operations using circling minimums. The FAA made similar revisions to § 91.176(b)(2)(i) as suggested by Boeing.

Boeing also recommended that the FAA permit EFVS operations on curved required navigation performance (RNP) approaches, which may have a straight-in landing segment. Boeing stated that the use of curved RNP approaches is increasing, that they are often used in mountainous terrain where go-arounds could be more of an issue, and that EFVS could improve safety and efficiency in such situations.

The FAA agrees that § 91.176(a) and (b) should not prohibit persons from conducting EFVS operations on curved RNP approaches that have a straight-in landing segment. RNP approaches are approved, vertically guided instrument approach procedures that are designed to align with a specific runway and terminate with a DA. While their line of minima is charted somewhat differently than other approaches with straight-in ''S'' line of minima, the curved RNP line of minima specifies a DA. Accordingly, § 91.176(a) and (b) permit RNP approaches. However, because EFVS performance may affect the specific approaches that an operator may conduct, the FAA may define applicable limitations in an operator's Operations Specifications (OpSpec), Management Specifications (MSpec), or Letter of Authorization (LOA) accordingly.

ALPA stated that the proposal would permit an EFVS operation to touchdown and rollout on a ''straight-in precision instrument approach procedure or an approach with approved vertical guidance,'' which would seem to encompass an approach procedure with vertical guidance (APV). However, APV describes a class of approach procedures defined in ICAO Annex 6 as an approach procedure ''which utilizes lateral and vertical guidance but does not meet the requirements established for precision approach and landing operations.'' Based on this definition, a person could conclude that an APV approach is a non-precision approach procedure. The proposal indicated that EFVS operations to touchdown and rollout would not be permitted on non-precision approaches. ALPA noted that this could cause confusion and recommended that the FAA clarify what it meant by ''approved vertical guidance.''

The FAA agrees with ALPA that the phrase ''straight-in precision approach procedure or an approach with approved vertical guidance'' is confusing because persons could conclude that APV approaches are non-precision approaches, which are not permitted under § 91.176(a). The FAA did not intend to prohibit persons from conducting EFVS operations to touchdown and rollout on APV approaches, which will have a charted DA/DH. Therefore, for this reason and in addition to the reasons Boeing raised, § 91.176(a) now permits EFVS operations to touchdown and rollout on approaches with minimums that include a DA/DH. Additionally, as mentioned previously, § 91.176(a)(2)(i)

[24] See Instrument Flying Handbook, FAA–H–8083–15B (2012) (stating that the term ''minimums'' refers to the landing section of an instrument approach chart, which sets forth the lowest altitude and visibility approved for the instrument approach procedure).

[25] The AIM provides the aviation community with basic flight information and Air Traffic Control (ATC) procedures. The PCG promotes a common understanding of terms used in the ATC system, including terms which are intended for pilot/controller communications. The TERPS consists of criteria for constructing terminal instrument procedures. In the AIM, ''straight-in approach'' describes a procedure with straight-in landing minimums, without regard to whether or not a procedure turn is required. In the PCG, ''straight-in approach'' means an instrument approach where the final approach is begun without first having executed a procedure turn, but not necessarily completed with a straight-in landing or made to straight-in landing minimums. The PCG defines a ''straight-in landing'' as ''a landing made on a runway aligned within 30 degrees of the final approach course following completion of an instrument approach.'' The use of ''straight-in approach'' in TERPS criteria generally refers to an approach that is aligned with a runway—not necessarily within 30 degrees—and for which straight-in landing minimums are authorized.

specifies that persons conducting EFVS operations may not use circling minimums. The FAA believes these revisions clarify that EFVS operations to touchdown and rollout may be conducted on APV approaches.

Sierra Nevada Corporation suggested editorial changes to proposed § 91.176(a) to clarify that persons must follow the requirements specified in paragraph (a). The commenter recommended similar revisions to § 91.176(b). The FAA agrees with the commenter and adopted the editorial changes in § 91.176(a), which more clearly articulate the regulatory requirements. The FAA did not, however, adopt the editorial changes in § 91.176(b) because they did not coincide with the revised language in that paragraph.

Dassault Aviation asked whether the FAA would take into account the new approach classifications described in the revised draft ICAO All Weather Operations (AWO) Manual in the EFVS regulations. Dassault Aviation stated that the draft AWO Manual describes 2D and 3D approaches rather than ''precision approaches'' and ''approaches with vertical guidance.'' The FAA is not including the ICAO terms or definitions in this final rule as they are outside the scope of the NPRM. The necessary references and descriptions in U.S. guidance material have not been updated at this time, but the FAA notes that the agency continues to work with ICAO on this subject.

Rockwell Collins commented that the FAA's statement in the proposal about not permitting EFVS operations to touchdown and rollout on non-precision approaches implies that non-precision approaches are no longer an approved EFVS operation. The FAA disagrees. Section 91.176 contains two distinct types of EFVS operations. Section 91.176(a) contains the new regulations, which enable EFVS operations to touchdown and rollout. Section 91.176(b) contains the regulations originally found in § 91.175(l) and (m), which enable EFVS operations to 100 feet above the TDZE. Section 91.176(a) permits EFVS operations to touchdown and rollout only on approaches that have a DA/DH. However, § 91.176(b) continues to permit EFVS operations down to 100 feet above the TDZE on non-precision approaches, just as § 91.175(l) has allowed these operations since 2004.

Finally, Gulfstream commented that § 91.176(a) should allow EFVS operations to touchdown and rollout on the same instrument approach procedures for which EFVS to 100 feet operations are permitted, which would include approaches without published vertical guidance. The FAA does not agree. The intent of § 91.176(a) is to provide for a stabilized descent and to ensure the aircraft is oriented toward the runway of intended landing while conducting an EFVS operation to touchdown and rollout. A stabilized descent reduces the need to maneuver at low altitudes, thereby minimizing risk. Therefore, the pilot must conduct the EFVS operation to touchdown and rollout on an approach to a DA or DH using vertical guidance that is part of the approach design.

The FAA notes, however, that operators who have been issued OpSpec/MSpec/LOA C073, ''Vertical Navigation (VNAV) Instrument Approach Procedures (IAP) Using Minimum Descent Altitude (MDA) as a Decision Altitude (DA)/Decision Height (DH),'' may conduct EFVS operations to touchdown and rollout on certain non-precision approaches that use an MDA as a DA/DH in accordance with the OpSpec/MSpec/LOA.

OpSpec/MSpec/LOA C073 authorizes operators to use an MDA as a DA/DH using vertical navigation (VNAV) on certain instrument approach procedures, which are listed in OpSpec/MSpec/LOA C052, ''Straight-In Non-Precision, APV, and Category I Precision Approach and Landing Minima—All Airports.'' It has always been the FAA's intent to allow EFVS operations on certain non-precision approaches in accordance with OpSpec/MSpec/LOA C073. However, as discussed above, we made changes to proposed § 91.176(a) as a result of comments. In making these changes, § 91.176(a) would have prohibited EFVS operations on certain non-precision approaches conducted in accordance with OpSpec/MSpec/LOA C073 because paragraph (a) would have restricted EFVS operations to touchdown and rollout to approach procedures with minimums that included a DA or DH. Accordingly, the FAA is adding language to § 91.176(a) that allows an operator who is otherwise authorized by the Administrator, such as through OpSpec, MSpec, or LOA C073, to use an MDA as a DA/DH with vertical navigation on an instrument approach procedure, to conduct an EFVS operation to touchdown and rollout in an aircraft below the authorized MDA in accordance with that authorization. When an operator is conducting an EFVS operation in accordance with OpSpec/MSpec//LOA C073, that operator must still meet the requirements of paragraphs (a)(1) through (a)(4) of § 91.176.

The FAA notes that it is revising the regulatory language to be performance based and allow for new technologies and approaches that ensure a stabilized visual segment. Accordingly, this final rule allows EFVS operations to touchdown and rollout on all approach procedures with an authorized DA or DH, and it omits direct reference to the types of approach procedures permitted and eliminates the term ''approved vertical guidance.'' The FAA recognizes that many factors may affect an operator's ability to conduct an EFVS operation. As stated in § 91.176(a)(4), the FAA may prescribe additional limitations through an OpSpec, MSpec, or LOA to ensure the safe conduct of EFVS operations.

b. Touchdown Zone

As proposed in the NPRM, for EFVS operations to touchdown and rollout, § 91.176(a)(2)(v) requires the aircraft to continuously be in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and § 91.176(a)(2)(vi) requires the descent rate to allow touchdown to occur within the touchdown zone of the runway of intended landing.

Several commenters raised concerns about the term ''touchdown zone'' in § 91.176(a)(2)(vi). Boeing commented that the FAA needs to define the term ''touchdown zone'' for purposes of EFVS operations and pointed out that it is defined differently in different documents. For example, the AIM defines the touchdown zone as the first 3,000 feet of the runway beginning at the threshold, but RTCA DO–315A and its revision, RTCA DO–315B, define the touchdown zone as the first 3,000 feet or first one-third of the runway, whichever is shorter. Boeing asked the FAA for clarification because applicants and EFVS equipment designers need to know what the performance expectations are for the EFVS equipment. Dassault Aviation recommended that the FAA specify that the touchdown zone is the first 3,000 feet or the first one-third of the runway because the 3,000-foot metric may not be adequate for short runways. An individual commenter expressed similar concerns and added that ICAO defines touchdown zone as the portion of a runway, beyond the threshold, where it is intended that a landing aircraft first contact the runway. He also noted that other FAA documents contain guidance to land in the first one-third of a runway. Given the operational implications of EFVS operations, he recommended that the FAA revise the EFVS rule and the AIM to emphasize that landing in the first third of the

runway or the first 3,000 feet, whichever is less, should suffice for almost all landing operations by fixed wing aircraft.

The FAA agrees with the commenters that, for the purpose of EFVS operations, pilots should touch down in the first 3,000 feet or the first one-third of the runway, whichever is shorter. However, the FAA will not amend the definition of ''touchdown zone'' in the AIM, nor define ''touchdown zone'' in the EFVS rule because the term has a broader application than EFVS operations. The AIM contains the ICAO definition of touchdown zone but also defines it as the first 3,000 feet of the runway beginning at the threshold. This definition is used to determine TDZE in the development of straight-in landing minimums for instrument approaches. The subject of landing performance is complex and is affected by many variables such as available landing runway, surface conditions, aircraft performance, operating procedures, and many other factors. Furthermore, the use of the term touchdown zone in § 91.176(a)(2)(vi) is similar to its use in other sections of the regulations that address both EFVS and other operations, such as §§ 91.175(c)(1), 121.651(c)(1), 121.651(d)(1), and 91.175(l)(1), the latter of which is being moved to § 91.176(b)(2)(v) in this final rule.

Accordingly, although the FAA does not consider it appropriate to amend the definition of ''touchdown zone'' in this rule, the FAA notes that AC 20–167A specifies a relevant means of compliance to obtain airworthiness approval for EFVS. AC 20–167A, paragraph 6–2(f)(4) states that, during airworthiness performance demonstrations, persons should demonstrate longitudinal touchdown performance within the first one-third, or the first 3,000 feet of the runway, whichever is more restrictive, and touchdown performance should be equivalent to or better than that achieved in visual operations for the specific aircraft.

c. Definition of ''EFVS Operation'' and Underlying Operational Concepts

Section 1.1 defines ''EFVS operation'' as an operation in which visibility conditions require an EFVS to be used in lieu of natural vision to perform an approach or landing, determine enhanced flight visibility, identify required visual references, or conduct the rollout.

Dassault Aviation asked the FAA to clarify why the definition of an EFVS operation includes determining enhanced flight visibility, identifying required visual references, and conducting the rollout, whereas the EFVS I and EFVS II operations referred to in AC 90–106A only appear to address approaches below DA/DH and approaches to touchdown.

The definition of an EFVS operation is consistent with the operational descriptions in proposed AC 90–106A. While an EFVS can provide situational awareness in any phase of flight, such use does not constitute an EFVS operation unless visibility conditions require the use of an EFVS in lieu of natural vision to perform an approach or landing, determine enhanced flight visibility, identify required visual references, or conduct the rollout. When flight visibility using natural vision is less than what is required by the instrument approach procedure being flown, a person may perform an EFVS operation. It would be an EFVS operation in this scenario because the visibility conditions require the person to use the EFVS in lieu of natural vision to descend below DA/DH. More specifically, the person must use the EFVS to assess that the enhanced flight visibility is not less than what is required by the instrument approach procedure and to identify the required visual references. The EFVS I and EFVS II operations referred to in proposed AC 90–106A are consistent with the definition of an EFVS operation, because they address operations where the visibility conditions require the use of an EFVS for descent, namely, EFVS operations. The FAA notes, however, that AC 90–106A no longer contains the terms EFVS I and EFVS II. Instead, that AC uses terminology consistent with § 91.176.

d. Light Emitting Diodes (LEDs) and EFVS Operations

The Aerospace Medical Association commented that many airports are installing new position, taxi, and obstruction lights that use LED lights. It stated that night vision goggles (NVGs) and current EFVS systems are unable to sense LED lights. As a result, aircrew using EFVS to descend through the weather may not acquire visual aids or obstruction lights that use LEDs. Central Management Services (CMS) submitted a similar comment noting that EFVS is designed to sense incandescent lights, not LED lights, and that as airports install LED lighting to save money, the new lighting will eliminate the benefits of EFVS. The commenter also stated that the FAA should require airports to install Infrared (IR) emitters in all new LED airport lighting systems and retrofit existing LED installations. Additionally, the commenter stated that airports will not spend the money to install IR emitters on their own, and it is only a matter of time before LEDs appear in approach lighting and runway lighting systems.

The FAA acknowledges the commenters' concerns regarding LED lighting; however, the FAA disagrees that the installation of LED lights will eliminate the benefits of EFVS and it does not mandate the installation of specific lighting technologies. On January 4, 2007, Congress passed the Energy Independence and Security Act, which mandates phasing out certain incandescent lights for energy conservation purposes. As a result, LED lighting is becoming more prevalent in the NAS. While currently approved IR-based EFVS cannot sense LED lighting, LEDs do not completely eliminate the benefits of EFVS. The EFVS regulations provide for required visual references other than lighting, such as markings, the runway threshold, and the runway touchdown zone landing surface. Therefore, as long as a pilot can see the required visual references using an EFVS, he or she may conduct an EFVS operation. The FAA also notes that the presence of LEDs does not make an EFVS operation unsafe. If the required visual references are not distinctly visible and identifiable by the pilot, then the pilot must execute a missed approach just as he or she would if the approach were being conducted with natural vision instead of EFVS. The FAA has addressed operational considerations associated with LED lighting in AC 90–106A and Information for Operators (InFO) 11004, Enhanced Flight Vision System (EFVS), Enhanced Vision Systems (EVS), and Night Vision Goggles (NVG) Compatibility with Light-Emitting Diodes (LEDs) at Airports and on Obstacles. Also, EFVS sensors based on other technologies might be developed and approved in the future, and thus would be unaffected by the installation of LED airport and runway lighting.[26]

[26] The FAA and industry are currently working together to address EFVS and LED interoperability through the SAE G–20 Airport Lighting Committee. This committee was tasked by the FAA to evaluate and recommend potential solutions. To date, several prototype IR/LED light fixtures have been developed and are currently being tested at the FAA's William J. Hughes Technical Center. Additionally, in October 2014, the FAA conducted an LED Symposium comprised of FAA, other government agencies, SAE G–20, and industry participants. One of the action items from the LED Symposium was to develop a comprehensive operational test plan and conduct operational flights and evaluations using EFVS, the LED approach lighting system at the FAA's William J. Hughes Technical Center, and prototype infrared emitters.

Furthermore, the FAA does not mandate installation of specific lighting technologies. Airport operators decide what approved lighting technologies they will install at their airport location, and incandescent and LED airport lighting technologies both meet the requirements of § 139.311, ''Marking, signs, and lighting.'' Lighting technology manufacturers have significantly reduced the availability of traditional incandescent lighting technology for airport applications as a result of the Energy Independence and Security Act.

e. LOA Requirement for Part 91 Operators To Conduct EFVS Operations to Touchdown and Rollout

Section 91.176(a)(2)(viii) requires a person conducting EFVS operations under part 91 to conduct the operation in accordance with an LOA unless the operation is conducted under subpart K of part 91, or conducted in an aircraft that has been issued an experimental certificate under § 21.191 for the purpose of research and development or showing compliance with regulations.[27] This slightly differs from what was proposed in the NPRM, in that the FAA did not propose to provide an exception from the LOA requirement for EFVS operations conducted under part 91 in aircraft issued an experimental certificate under § 21.191 for the purpose of research and development or showing compliance with regulations.

Three commenters expressed concerns about requiring an LOA for part 91 operators to conduct EFVS operations to touchdown and rollout. An individual commented that requiring part 91 operators to obtain an LOA is an unnecessary regulatory requirement; however, he supported the FAA's proposal to require training and recent flight experience for EFVS operations. Central Management Services and an individual commented that pilots with a demonstrated history of EFVS training and currency should not be required to obtain an LOA and should be ''grandfathered'' under the new EFVS regulation. Central Management Services further stated that only pilots new to EFVS technology and equipment should be required to obtain an LOA. Central Management Services and an individual contended that there is precedence for ''grandfathering'' pilots with previous experience and pointed to those paragraphs in § 61.31 pertaining to pilots who had previous experience operating pressurized aircraft above 25,000 feet and pilots who had previous tailwheel experience. HAI, Central Management Services, and an individual expressed concern about the length of time it generally takes the FAA to issue an LOA.

Because of the performance-based structure of the EFVS regulations under § 91.176(a), the FAA finds it necessary to require part 91 operators, other than those conducting operations under part 91 subpart K or in an aircraft that has been issued an experimental certificate under § 21.191 for the purpose of research and development or showing compliance with regulations, to obtain an LOA to conduct EFVS operations to touchdown and rollout. The FAA has written § 91.176(a) in a way that is performance-based rather than explicitly specifying visibilities or other EFVS operating conditions and limitations in rule language. The FAA has structured the regulations so that it can manage the operating conditions and limitations for EFVS operations to touchdown and rollout through an operator's OpSpec, MSpec, or LOA. The FAA specifically structured the EFVS regulations this way to provide flexibility and to enable the FAA to structure an operator's authorization in a way that links equipage and system performance to specific operational capabilities. This structure also enables the FAA to respond more rapidly to new technology. Rather than restricting the use of all EFVS to a rigid and limiting set of visibility values and operating conditions and limitations, the FAA can permit a range of EFVS operations as vision system technologies and appropriate equipment certification guidance are developed. The FAA believes this structure best accommodates future growth while eliminating the need for additional rulemaking. Lastly, the FAA acknowledges the commenters' concerns about the length of time it generally takes to issue an LOA. The FAA notes that every effort is made to process applications in a timely manner.

The FAA notes that § 91.176(a)(2)(viii) now excepts EFVS operations conducted under part 91 in aircraft issued an experimental certificate under § 21.191 for the purpose of research and development or showing compliance with regulations from the requirement to obtain an LOA. These operations typically consist of a series of flights conducted to collect data or show compliance with regulations during EFVS certification activities using aircraft that have been placed in the experimental category. The flights are authorized when the FAA approves the program letter[28] describing the flight operations to be conducted and issues the experimental certificate with operating limitations. The FAA authorization is time-limited and carries an expiration date. Because these operations require FAA-approval, are time-limited, and carry operating limitations specific to the flights to be conducted, an LOA to conduct these operations is not required.

f. EFVS Operations Outside the U.S.[29]

Pursuant to § 91.176(a)(2)(x) and (b)(2)(viii), any person serving as a required flightcrew member for a foreign air carrier subject to part 129 must conduct both EFVS operations to touchdown and rollout and EFVS operations to 100 feet above the TDZE in accordance with OpSpecs authorizing the use of EFVS. The appropriate International Field Office (IFO) is responsible for authorizing part 129 foreign air carriers for EFVS operations. AC 90–106A contains additional information for EFVS operations conducted by foreign air carriers in the United States.

Part 91 operators (other than part 91, subpart K operators, who are required to obtain an MSpec under § 91.176(b)(2)(vii)) are not required to obtain an LOA in order to conduct EFVS operations to 100 feet above the TDZE under § 91.176(b). Verizon conducts EFVS operations to 100 feet above the TDZE under part 91 in the United States and pointed out that the rules for EFVS operations to 100 feet already in effect do not contain a provision for issuing an LOA to a part 91 operator. Verizon commented that, because it does not have an LOA, it has been unable to obtain approval from a foreign CAA to conduct EFVS operations to 100 feet

[27] The FAA also added language to § 91.176(a)(2)(viii) so persons who are otherwise authorized to conduct EFVS operations under other operating rules (*i.e.* subpart K of part 91 and parts 121, 125, 129, and 135) do not have to obtain an LOA to conduct part 91 operations such as ferry flights.

[28] For an aircraft to be eligible for an experimental certificate the aircraft must be registered and the applicant must satisfy one or more of the purposes stated in 14 CFR 21.191. Pursuant to § 21.193, applicants for experimental certificates must submit certain information with an application for airworthiness certification. This information is referred to as the ''program letter.'' The FAA uses the program letter to assist in establishing eligibility for an experimental certificate. The program letter must contain the required items listed in § 21.193 and be detailed enough to permit the FAA to prescribe the conditions and limitations necessary to ensure safe operation of the aircraft. ''Airworthiness Certification of Products and Articles,'' Order 8130.2H (Feb. 4, 2015).

[29] A person serving as a required flightcrew member of a foreign registered aircraft conducting operations under part 91 is not required to obtain an LOA in order to conduct EFVS operations to 100 feet above the TDZE because § 91.176(b)(2) does not require part 91 operators, other than those operating under part 91 subpart K, to obtain FAA authorization to conduct EFVS operations to 100 feet above the TDZE.

above the TDZE in the foreign country. As a result, it has been unable to use EFVS on its Gulfstream fleet for operational benefit outside of the United States. Verizon requested that the FAA revise § 91.176(b) to make provision for issuing an LOA to part 91 operators to facilitate approval by foreign CAAs.

The FAA is not revising § 91.176(b) as the commenter suggested. Part 91 operators have been authorized to conduct EFVS operations to 100 feet above the TDZE in the United States without an LOA for over 12 years. However, the FAA is aware that certain foreign CAAs require an authorization from the State of the operator in order to obtain approval to conduct EFVS operations in that country. The FAA is developing a process to facilitate foreign CAA approval for part 91 operators. AC 90–106A contains additional information about international EFVS operations.

g. EFVS Authorizations

Section 91.176(a) contains the regulations for EFVS operations to touchdown and rollout, and § 91.176(b) contains the regulations for EFVS operations to 100 feet above the TDZE. Under § 91.176(a)(2)(viii)–(xii), operators must obtain an LOA, MSpec, or OpSpec authorizing the use of EFVS in order to conduct EFVS operations to touchdown and rollout. Similarly, under § 91.176(b)(2)(vii)–(x), operators, except for part 91 operators (other than part 91, subpart K operators) must obtain an LOA, MSpec, or OpSpec authorizing the use of EFVS in order to conduct EFVS operations to 100 feet above the TDZE. Thales asked the FAA to clarify whether it will issue authorizations for EFVS operations to touchdown and rollout separately from authorizations for EFVS to 100 feet above the TDZE. Thales also asked whether authorizations for EFVS operations to touchdown and rollout will include EFVS operations to 100 feet above the TDZE. Lastly, Thales asked if operators who are currently authorized to conduct operations under § 91.175(l) and (m) will have to reapply for authorization to conduct EFVS operations under new § 91.176.

The FAA will issue separate authorizations for EFVS operations to touchdown and rollout and EFVS operations to 100 feet above the TDZE. Operators who are currently authorized to conduct EFVS operations to 100 feet above the TDZE, who wish to conduct additional operations now permitted under this rule, may do so only if those operations are authorized by their OpSpec, MSpec, or LOA for EFVS operations.

Operators currently conducting EFVS operations to 100 feet above the TDZE may continue to conduct those operations under their existing authorization until the FAA revises the operator's authorization to conform to the applicable provisions of the EFVS final rule. Lastly, AC 90–106A, Section 10, ''Operational Approval Process for EFVS Operations,'' provides guidance on the operational approval process and obtaining authorizations for EFVS operations.

h. EFVS for Takeoff Operations

FedEx Express, Gulfstream, Dassault Aviation, Elbit Systems of America, and Sierra Nevada Corporation commented that the FAA's notice did not address takeoff credit for EFVS. They noted that the FAA referenced existing processes through which takeoff credit for EFVS could be approved and requested that the FAA clarify those processes. In addition, Dassault Aviation requested that the FAA address when it plans to develop operational requirements and associated guidance material for takeoff using EFVS.

The FAA did not propose to enable the use of EFVS during takeoff operations because it may already authorize these operations through existing processes under § 91.175(f), which prescribes civil airport takeoff minimums for persons conducting operations under part 121, 125, 129, or 135. Under § 91.175(f), a person conducting operations under part 121, 125, 129, or 135 may obtain an authorization from the FAA, such as an OpSpec or LOA, authorizing lower than standard takeoff minimums, which may include the use of EFVS. The regulations, however, do not prescribe any takeoff minimums for part 91 operators (other than part 91, subpart K operators which under § 91.1039(e) have a minimum takeoff visibility of 600 feet). Therefore, part 91 operators (other than part 91, subpart K operators) may conduct takeoff operations using EFVS without obtaining an authorization from the FAA to conduct such operations.

It has come to the FAA's attention, however, that there is no existing process under the regulations for part 91, subpart K operators to obtain an authorization from the FAA to conduct takeoff operations using EFVS when the visibility is less than 600 feet. The FAA is therefore amending § 91.1039(e) to permit part 91, subpart K operators to conduct takeoff operations using EFVS when the visibility is less than 600 feet, provided these operations are conducted in accordance with the certificate holder's MSpec for EFVS operations.

The FAA is aware of the need for operational guidance regarding the use of EFVS during takeoff operations and is currently working to develop it.

i. Combined Vision Systems

A couple of commenters raised concerns about the use of synthetic vision. The HAI commented that § 91.176 and AC 90–106A should address the use of synthetic vision, when combined with an EVS that uses a real-time sensor image and appropriate flight information. Rockwell Collins commented that there are future technologies that could provide a real-time image of the external scene topography, which may be based on a database or communicated position information. It further commented that while these technologies may be considered combined vision system (CVS) applications,[30] the lines between enhanced vision, synthetic vision, and combined vision may become even less defined over time. Rockwell Collins suggested that only synthetic vision systems which exclusively use a computer-generated image of the external scene topography should not be addressed by the operational requirements in this rule. Furthermore, Eurocopter and American Eurocopter commented that the FAA should clarify whether a person could use CVS as an EFVS provided the CVS satisfied part 91's requirements.

The FAA disagrees that § 91.176 should address the use of synthetic vision. The amendments to part 91 address new operational benefits and requirements for EFVS only. However, a CVS consisting of an enhanced flight vision system and synthetic vision could be approved for EFVS operations if it met all of the requirements of the EFVS regulations.

j. Use of the Term ''EFVS'' in Rule Language

Garmin International commented that the proposed rule language unnecessarily references EFVS. It pointed out that in the future, part 91 might be updated to include additional technologies. Removing references to EFVS, and using only references to § 91.176, would eliminate the necessity for future revisions of the regulations.

The FAA disagrees with Garmin. The FAA is retaining the references to EFVS in the rule language because the rule is intended to address new operational

[30] A combined vision system involves a combination of SVS and EVS or EFVS. See AC No. 20–167A, *Airworthiness Approval of Enhanced Vision System, Synthetic Vision System, Combined Vision System, and Enhanced Flight Vision System Equipment.*

benefits and requirements for EFVS; it is not intended to address other systems that do not meet requirements applicable to EFVS.

k. Approach Plates and EFVS Operations

Under § 91.176(a), EFVS operations to touchdown and rollout may be conducted at any airport below the authorized DA/DH. Under § 91.176(b), EFVS operations to 100 feet above the TDZE may be conducted at any airport below the authorized DA/DH or MDA to 100 feet above the TDZE. Additionally, EFVS operations using circling minimums are not authorized pursuant to § 91.176(a)(2)(i) and (b)(2)(i).

The Aerospace Medical Association commented that an EFVS approach plate should be developed that specifies the procedure, equipment requirements, and visibility required to conduct EFVS operations. The FAA disagrees because persons may conduct EFVS operations on any instrument approach procedure that meets the criteria specified above. Therefore, an approach plate specifically for EFVS operations is not necessary.

The Aerospace Medical Association also asked whether the FAA will issue a special rating for pilots who conduct EFVS operations. The commenter stated that minimum qualification and experience should be required for pilots to perform EFVS operations. It pointed out that most airlines only permit captains to fly very low visibility takeoffs and instrument landing system (ILS) Category IIIB landings and that first officers must also have the same training.

The FAA will not issue a special rating to pilots for EFVS operations. Instead, the FAA is establishing ground and flight training requirements for EFVS operations in § 61.66(a), (b), and (c), and recent flight experience and refresher training requirements for EFVS operations in § 61.66(d) and (e). The FAA believes that the training, recent flight experience, and refresher training requirements of § 61.66 are sufficient to ensure safe operations and that a special rating for pilots who conduct EFVS operations is unnecessary. Furthermore, Flight Standardization Board (FSB) reports pertaining to specific EFVS and aircraft installations have not specified that pilot ratings for EFVS operations are necessary.[31]

[31] FSBs make findings of operational suitability and recommend master training, checking, and currency requirements applicable to aircraft and equipment.

l. References to EFVS-Specific Callouts

Airbus noted that the NPRM makes reference to ''EFVS-specific callouts'' but does not provide a precise definition of the term. Airbus requested that the FAA clarify where this term is defined in the proposed rule.

The FAA does not define the term ''EFVS-specific callouts.'' The FAA used this term twice in the NPRM to describe callouts, such as ''EFVS lights,'' which are unique to EFVS operations. Operators may develop other EFVS-specific callouts related to crew coordination activities during EFVS operations.

m. Miscellaneous Revisions to EFVS Operating Requirements

Sierra Nevada Corporation commented that proposed § 91.176(a)(3), which stated, ''No pilot operating under this section or §§ 121.651, 125.381, and 135.225 . . .'' should be changed to state, ''No pilot operating under this section or §§ 121.651, 125.381, or 135.225 . . .'' It also commented that the FAA should make a similar change to proposed § 91.176(b)(3) and that the FAA should delete the words ''and land'' from § 91.176(b)(3) because, under § 91.176(b), a pilot must land using natural vision and is not permitted to rely on EFVS to land.

The FAA agrees with the commenter, and has revised ''and'' to ''or'' in § 91.176(a)(3) and (b)(3) accordingly. However, the FAA disagrees with the commenter that it should remove ''and land'' from § 91.176(b)(3) because that section contains the visibility and visual reference requirements for using an EFVS to descend below DA/DH or MDA down to 100 feet above the TDZE and for using natural vision to descend below 100 feet above the TDZE to touchdown.

n. Opposing Comments on the FAA's Proposal

One commenter opposed the proposal. A private individual commented that the notice proposes a set of rules that are technically ambiguous, does not provide adequate safety for air carrier operations, favors one technology over other methods and technologies the commenter considers to be better and safer, and is unnecessary to achieve the intended benefits. The commenter believes that if these provisions are implemented they will not enhance safety or operability over competing and currently available technologies, and that the proposal could result in additional and unnecessary safety vulnerability.

The commenter stated that IR-based systems cannot penetrate certain fog conditions necessary for safe flight below a 100-foot height above touchdown (HAT) and that certain radar systems, while potentially able to marginally penetrate fog, have other severe resolution limitations. The commenter believes that picture based systems can provide little more than situational awareness and do not provide adequate closed loop flight control capability for missions requiring air carrier levels of accuracy, integrity, and availability. The commenter asserted that this is why UAVs still routinely crash when flying based on visual control, even with high quality visibility systems. The commenter further asserted that if path definition and flight guidance are available, the visual scene becomes unnecessary and is only an aid to situational awareness.

The FAA disagrees with the commenter and believes that this final rule provides an adequate level of safety for EFVS operations. EFVS operations to 100 feet above the TDZE have been conducted for over 12 years. The FAA is not aware of any accidents over this time period in which EFVS was a factor. This final rule extends these operations to include EFVS operations to touchdown and rollout and to permit operators using EFVS-equipped aircraft to dispatch, release, or takeoff under IFR, and to initiate and continue an approach, when the destination airport weather is below authorized visibility minimums for the runway of intended landing. This final rule also provides specific equipment, operational, and visibility and visual reference requirements for the conduct of EFVS operations to touchdown and rollout and EFVS operations to 100 feet above the TDZE. Additionally, this final rule includes detailed and specific ground and flight training requirements, and recent flight experience and proficiency requirements for pilots intending to conduct EFVS operations. It also provides updated requirements for pilot compartment view and equipment for EFVS. Authorizations to conduct EFVS operations will contain operating conditions and limitations appropriate to the EFVS operations to be conducted and may prescribe additional equipment, operational, and visibility and visual reference requirements to account for specific equipment characteristics, operational procedures, or approach characteristics. The authorizations to conduct the additional EFVS operations as well as the new training, recent flight experience, and proficiency requirements are

specifically intended to address the operating conditions and limitations necessary to ensure the safe conduct of all EFVS operations. The FAA's disposition of Boeing's comment in Section III.F further discusses this matter.

The commenter also contended that the notice was unfair and prejudiced and showed unjustified favoritism for one technology (EFVS, EVS, or SVS) over better and safer competing technologies, such as Autoland, Flight Guidance based HDDs, or Flight Guidance based HUDs, that are already adequately and fairly treated by current regulations and guidance. As an example, the commenter stated there is no safety case justification for crediting EFVS, without also crediting the far safer AUTOLAND LAND III and LAND II Modes, as well as HUD AIII modes, for flight release or dispatch credit, as well as for approach initiation or alternate minimums credit. The commenter believes that this rule will expose the FAA to significant legal challenges by OEMs and operators with far better and safer systems that are not being offered equivalent or better benefits.

It is not the intent of the FAA to provide an unfair advantage to one specific technology, but rather to address the conduct of EFVS operations in this rule. Other operations were not the subject of the proposal. The FAA notes, however, that the regulations have permitted operators to conduct Category III operations to dispatch, flight release, or takeoff under IFR and initiate and continue an approach in lower than standard visibility conditions for many years. The FAA is structuring similar dispatch, flight release, and approach initiation benefits for EFVS operations in lower than standard visibility conditions within the performance limitations of the EFVS equipment to be used.

3. Visibility and Visual Reference Requirements

a. Visual References Below 100 Feet Above the TDZE During EFVS Operations to Touchdown and Rollout

Under § 91.176(a)(3)(i), a pilot conducting an EFVS operation to touchdown and rollout may not operate an aircraft below the authorized DA/DH and land unless that pilot determines that the enhanced flight visibility provided by an EFVS is not less than the visibility prescribed in the instrument approach procedure being used. Additionally, § 91.176(a)(3)(iii) permits a pilot to continue descending below 100 feet above the TDZE and land using the enhanced flight visibility provided by an EFVS, provided one of the following visual references is distinctly visible and identifiable to the pilot: The runway threshold, the lights or markings of the threshold, the runway touchdown zone landing surface, or the lights or markings of the touchdown zone. The requirement remains unchanged from the NPRM.

Thales commented that § 91.176(a)(3)(iii) as proposed would have permitted a pilot to use only enhanced flight visibility provided by an EFVS to identify the required visual references at and below 100 feet above the TDZE. Thales stated that it is possible a pilot could see the required visual references with natural vision, but not with enhanced flight visibility. Thales recommended that § 91.176(a)(3)(iii) permit a pilot to use either enhanced flight visibility provided by an EFVS or natural vision to identify the required visual references to descend below 100 feet above the TDZE. It asserted that conducting a missed approach when a pilot sees the required visual references with natural vision, but not with enhanced flight visibility provided by an EFVS, would be unnecessary and counterproductive.

The FAA disagrees with Thales that § 91.176(a)(3)(iii) should also allow the use of natural vision to identify the required visual references to descend below 100 feet above the TDZE. If visibility conditions improve after a pilot begins an EFVS operation, whether it is conducted under § 91.176(a) or (b), that pilot may continue descending to a landing using natural vision provided he or she continues the flight in accordance with existing flight rules based on natural vision, with existing requirements under § 91.175(c) for operation below DA/DH or MDA, or with existing requirements under § 91.176(b) for descending below 100 feet above the TDZE. Accordingly, if an operator were conducting an EFVS operation to touchdown and rollout under § 91.176(a), and could acquire the visual references with natural vision at 100 feet above the TDZE, that operator would not have to conduct a missed approach as Thales suggested so long as the operator complies with the flight rules based on natural vision, § 91.175(c), or § 91.176(b).[32] In order to continue descending below 100 feet above the TDZE under § 91.176(b)(3)(iii), however, the pilot conducting the EFVS operation must meet the training requirements to conduct operations under § 91.176(b). The FAA anticipates that the majority of operators conducting EFVS operations will be authorized to conduct EFVS operations under both § 91.176(a) and (b).

During an EFVS operation to touchdown and rollout, the pilot must comply with both paragraphs (a)(3)(i) and (a)(3)(iii) at 100 feet above the TDZE of the runway of intended landing and below that altitude. Therefore, at 100 feet above the TDZE and below that altitude, the enhanced flight visibility provided by an EFVS may not be less than the visibility prescribed in the IAP being used. Additionally, the enhanced flight visibility using EFVS must be sufficient for one of the visual references in paragraph (a)(3)(iii) to be distinctly visible and identifiable to the pilot. The only exceptions to these requirements would be when visibility improves such that a pilot could continue descending to a landing under the conditions described in the previous paragraph.

b. Enhanced Flight Visibility Requirement During EFVS Operations to 100 Feet Above the TDZE

Under § 91.176(b)(3)(i), in order for a pilot to continue an approach below the authorized MDA or DA/DH and land, the pilot must determine that the enhanced flight visibility observed by use of an EFVS is not less than the visibility prescribed in the instrument approach procedure being used. This requirement differs from what the FAA proposed because it applies from descent below MDA or DA/DH until touchdown,[33] rather than to the portion of the approach from the authorized MDA or DA/DH to 100 feet above the TDZE, as proposed. This change resulted from our own continued review of the NPRM.

In the NPRM, the FAA explained that the requirements of § 91.176(b)(3)(iii) would be structured to conform to the original intent of § 91.175(l)(4). However, in clarifying the requirements of § 91.175(l)(2) and (l)(4), the FAA inadvertently proposed a requirement in § 91.176(b)(3)(i) that was contrary to the original intent of § 91.175(l)(2) and (l)(4). In the 2004 EFVS rule, the FAA intended § 91.175(l)(2) to provide an enhanced flight visibility requirement equivalent to § 91.175(c)(2), except that the pilot could use an EFVS to determine ''enhanced flight visibility''

[32] Regardless of whether an operator is conducting an EFVS operation under § 91.176(a) or (b), the pilot must determine that the enhanced flight visibility observed by use of the EFVS is not less than the visibility prescribed in the instrument approach procedure. 14 CFR 91.176(a)(3)(i) and (b)(3)(i).

[33] Section 91.175(l)(2) previously contained this requirement.

as compared to ''flight visibility'' with natural vision.[34] Additionally, the FAA intended § 91.175(l)(4) to require that, in addition to determining that the enhanced flight visibility is not less than that prescribed in the instrument approach procedure being used, at 100 feet above the TDZE and below, one of the required visual references would have to be distinctly visible and identifiable without relying on the EFVS for the pilot to continue to a landing.

As evidenced from a legal interpretation dated September 10, 2010, the pilot must maintain the flight visibility required in § 91.175(c)(2) from descent below MDA or DA/DH until touchdown.[35] Because the FAA intended the requirements of § 91.176(b)(3)(i) and (b)(3)(iii) to conform to the original intent of § 91.175(l)(2) and (l)(4), and the original intent of § 91.175(l)(2) was to provide a requirement equivalent to § 91.175(c)(2), § 91.176(b)(3)(i) now requires the pilot to maintain the enhanced flight visibility from descent below MDA or DA/DH until touchdown. Therefore, at 100 feet above the TDZE and below, a pilot must meet the requirements of § 91.176(b)(3)(i) and (iii) in order to continue to a landing.

c. Visual References for Rollout

As proposed in the NPRM, § 91.176(a)(3) specifies visibility and visual reference requirements for EFVS operations below the authorized DA/DH and for EFVS operations below 100 feet above the TDZE. A couple of commenters raised concerns regarding the lack of visibility and visual reference requirements for rollout during an EFVS operation. Thales proposed that the FAA either clarify the rollout requirements or add visibility and visual reference requirements to the regulations. Sierra Nevada Corporation contended that the required visual references specified in § 91.176(a)(3)(iii) are typically behind the aircraft by the time the aircraft slows to a safe taxi speed. It asserted that the FAA should specify an additional set of visual references for rollout, such as those in RTCA DO–341, Section 3.1.3.4, which includes visual references for rollout, such as the centerline lights or markings and the runway edge lights or markings, if installed and serviceable, or other visual references which accurately indicate the runway edges and the runway centerline.

The FAA finds it unnecessary to specify visual references for rollout by regulation because the operating rules require sufficient forward visibility in order to conduct EFVS operations to touchdown and rollout, and an applicant must demonstrate that the EFVS can safely perform the rollout task during the equipment certification process. Under § 91.176(a), a pilot must determine that the enhanced flight visibility observed by using an EFVS is not less than what is prescribed in the IAP before descending below DA/DH to touchdown. This requirement in addition to the visibility and visual reference requirements specified in § 91.176(a)(3) ensures that sufficient forward visibility exists for the pilot to safely conduct the approach, landing, and rollout. Furthermore, during the certification flight test, an applicant will have to demonstrate that he or she can use the EFVS to safely perform rollout tasks. Additionally, the FAA may include visibility and visual reference requirements for rollout in an operator's authorization to conduct EFVS operations, if necessary. The FAA notes that AC 20–167A provides a means of compliance for an EFVS to obtain airworthiness approval and contains guidance applicable to the evaluation of EFVS performance during rollout to a safe taxi speed.

d. Controlling Runway Visual Range (RVR) Values

Section 91.176 does not specify which runway visual range (RVR) values are controlling for operational purposes. Therefore, Dassault Aviation asked the FAA to clarify whether the touchdown zone, mid, or rollout RVR is controlling when more than one RVR value is provided for the runway of intended landing. The FAA will specify which RVR values are controlling for operational purposes in an operator's OpSpec, MSpec, or LOA for EFVS operations. The FAA is also providing guidance on this topic in AC 90–106A.

e. Emitter Technologies as Alternative Visual Aids

An individual commented that the NPRM addresses EFVS operations in a performance-based manner but provides no performance-based equivalent for light components. The commenter stated that emitters of various types that might be interoperable with EFVS sensor technologies could be implemented as an alternative or supplement to traditional lighting systems or visual aid components. The commenter further stated that emitters of this type could be useful in conditions of below Category II weather or used in locations where approach lighting systems are not possible, such as when an airport is surrounded by water. The commenter recommended that the FAA revise the visual reference language in § 91.176 to permit the use of emitter technologies in addition to the visual references currently specified.

While emitters that might be interoperable with EFVS sensor technologies could be implemented as an alternative or supplement to traditional lighting systems or visual aid components, specifying a performance based equivalent for light components is outside the scope of this rulemaking. The FAA notes, however, that §§ 91.176(a)(3) and (b)(3) do not prohibit the use of emitter technologies to facilitate the identification of the required visual references.

f. Use of EFVS To Satisfy the Visibility Requirements of §§ 91.155 and 91.157 During Rotorcraft Operations

HAI commented that the FAA should permit rotorcraft to use EFVS to provide the required visibility necessary to operate under §§ 91.155 and 91.157. The FAA is not adopting this suggestion because it is outside the scope of this rulemaking. The FAA did not propose to permit such operations and others have not had an opportunity to comment.

D. Revisions to Requirements for EFVS Operations to 100 Feet Above the TDZE (§ 91.176(b))

1. Methods for Conducting Approaches During EFVS Operations to 100 Feet Above the TDZE

Section 91.176(b) contains the regulations for EFVS operations to 100 feet above the TDZE. These requirements were previously located in § 91.175(l) and (m). A commenter noted that § 91.176(b) does not contain a regulatory requirement to use vertical guidance to fly a non-precision approach and that, upon meeting the visual reference requirements, a pilot could descend immediately and as rapidly as desired to 100 feet above the TDZE rather than descend along a vertically guided continuous descent profile. The commenter, therefore, recommended that § 91.176(b) restrict EFVS operations to 100 feet above the TDZE to approaches that have approved vertical guidance. The commenter also noted that § 91.176 does not require descent along an obstacle-free path and that EFVS was not designed to detect obstacles, but it is important for a pilot to ensure that a descent is accomplished

[34] Enhanced Flight Vision Systems, NPRM, 68 FR 6802, 6805 (Feb. 10, 2003).

[35] Legal Interpretation to Mr. Gary Thomey (Sept. 10, 2010); *see* Takeoff and Landing Minimums, 46 FR 2280, 2282 (Jan. 8 1981) (revising the requirement, then codified as § 91.116, to ''make it clear that the pilot must have this flight visibility from descent below MDA or DH until touchdown'').

along a path known to be obstacle-free, such as by using another approach to the same runway that has a DA, or by using a VASI, PAPI, or other information. The commenter therefore recommended that proposed § 91.176(b)(2)(iii) require the aircraft to be continuously in a position from which a descent to a landing on the intended runway can be made along an obstacle-free path at a normal rate of descent using normal maneuvers.

Central Management Services shared similar concerns. It noted that, while it doubted any Part 141 or Part 142 facility advocated the ''dive and drive'' method for conducting straight-in, non-precision approaches, the EFVS rule does not prohibit it, and therefore recommended that the FAA do so in § 91.176.

The FAA finds that these comments are outside the scope of this rulemaking. The FAA did not propose these restrictions to § 91.176(b); therefore, other persons did not have an opportunity to comment. Additionally, persons have been conducting EFVS operations to 100 feet above the TDZE safely for over 12 years under § 91.175(l) and (m), which did not contain such restrictions.[36] AC 90–106A provides guidance on how to safely conduct EFVS operations on approaches with an MDA using straight-in landing minimums.

E. Training, Recent Flight Experience, and Refresher Training Requirements for Persons Conducting EFVS Operations (§ 61.66)

The FAA has reorganized the pilot requirements proposed in §§ 61.31 and 61.57 and consolidated them in new § 61.66. Section 61.66 contains the EFVS ground and flight training requirements, which were proposed as § 61.31(l), and the EFVS recent flight experience requirements, which were proposed as § 61.57(h) and (i).[37] The FAA is consolidating the EFVS training requirements with the EFVS recent flight experience requirements into a single section for organizational clarity. The FAA believes that consolidating these requirements into a single new section in part 61, which is comprised solely of the EFVS pilot requirements, will help facilitate compliance with the regulations by making them more accessible and comprehensible to pilots. The FAA has also made modifications to these requirements as a result of comments and as a result of the FAA's own continued review of the proposal, which this section will discuss in detail below.

The following table outlines each requirement, its previously proposed section in the NPRM, its corresponding section in new § 61.66, and a summary of the significant changes from the proposal.

Requirement	NPRM	Final rule	Change from NPRM
Ground Training	Proposed § 61.31(l)(1)	§ 61.66(a)(1)	Clarifies that a person must receive the ground training from an authorized training provider under an FAA approved training program. Clarifies that the EFVS ground training must be appropriate to the category of aircraft for which the person is seeking the EFVS privilege.
Ground Training Subjects	Proposed § 61.31(l)(2)(i)–(vii).	§ 61.66(a)(2)(i)–(viii)	Adds the following ground training subject: EFVS sensor imagery and required aircraft flight information and flight symbology.
Flight Training	Proposed § 61.31(l)(3)	§ 61.66(b)(1)	Clarifies that a person must receive the flight training from an authorized training provider under an FAA approved training program. Clarifies that the EFVS flight training must be provided in the category of aircraft for the EFVS operation to be conducted.
Flight Training Tasks	Proposed § 61.31(l)(4)(i)–(viii).	§ 61.66(b)(2)(i)–(viii)	No significant changes from NPRM.
Supplementary EFVS Training.	Proposed § 61.31(l)(6)	§ 61.66(c)	Clarifies that supplementary EFVS training, previously proposed as differences training, consists of both ground and flight training. Clarifies that a person must receive supplemental EFVS training in the category of aircraft for the EFVS operation to be conducted. No longer permits a pilot to receive a proficiency check in lieu of supplementary EFVS training.
Recent Flight Experience: EFVS.	Proposed § 61.57(h)	§ 61.66(d)	Clarifies that the EFVS recent flight experience requirements must be obtained in the category of aircraft for which the person is seeking the EFVS privilege.
EFVS Refresher Training	Proposed § 61.57(i)	§ 61.66(e)(1)	Calls the mechanism by which a person reestablishes EFVS currency a ''refresher course'' rather than a ''proficiency check.'' Provides pilots with an additional 6 months to satisfy the EFVS recent flight experience requirements.
Individuals who may conduct EFVS Refresher Training.	Proposed § 61.57(i)(2)	§ 61.66(e)(2)	Requires EFVS refresher training to be conducted by an authorized training provider.
Military Pilots and Former Military Pilots in the U.S. Armed Forces.		§ 61.66(f)	Adds a new paragraph that specifically addresses military pilots and former military pilots in the U.S. Armed Forces.

[36] In the 2004 EFVS final rule, ''Enhanced Flight Vision Systems,'' 69 FR at 1625 (Jan. 9, 2004), the FAA explained that the obstacle risk for a non-precision approach using EFVS is significantly mitigated by only permitting EFVS operations on straight-in approaches. The FAA further noted that a pilot could maintain obstacle clearance by using the recommended procedures to fly a straight-in instrument approach procedure with an MDA, and by using the FPV cue and FPARC displayed by the EFVS to monitor and maintain the desired vertical path when operating below the MDA.

[37] As discussed in section III.E.2, § 61.66(e) clarifies the proficiency check requirements that were proposed in § 61.57(i).

Requirement	NPRM	Final rule	Change from NPRM
Use of Full Flight Simulators (FFS).	Proposed § 61.31(l)(5) ..... Proposed § 61.57(h)(2) Proposed § 61.57(i)	§ 61.66(g)	Creates a new paragraph, which contains the requirements for using a FFS to meet the flight training, recent flight experience, and refresher training requirements. Clarifies that each FFS must be qualified and maintained in accordance with part 60, or be a previously qualified device, as permitted in accordance with § 60.17. Clarifies that each FFS must be approved by the Administrator for the tasks and maneuvers.
Grandfather clause and compliance date for persons conducting EFVS operations to 100 feet above the TDZE.	Proposed § 61.31(l)(7)(ii) ...	§ 61.66(h)(4) § 91.176(b)(4)	Creates two provisions for clarity. Section 61.66(h)(4) contains the grandfather clause, and § 91.176(b)(4) contains the compliance date.

1. Training Requirements for Persons Conducting EFVS Operations (§ 61.66(a), (b) and (c))

Under § 61.66(a) and (b), no person may manipulate the controls of an aircraft or act as pilot in command of an aircraft during an EFVS operation as specified in § 91.176(a) or (b) unless that person has received and logged ground and flight training for the EFVS operation under a training program [38] approved by the Administrator and obtained a logbook or training record endorsement from an authorized training provider certifying that the person has satisfactorily completed the ground and flight training. Section 61.66(a) also requires a person serving as a required pilot flightcrew member (who does not manipulate the controls) during an EFVS operation to touchdown and rollout to comply with the ground training requirements in paragraph (a). EFVS training must include ground training on the subjects set forth in § 61.66(a)(2) and flight training on the tasks set forth in § 61.66(b)(2).

Consistent with the proposal, under the final rule, the Administrator may approve a training program that includes ground and flight training for one EFVS operation (*e.g.,* § 91.176(a) or (b)) or both EFVS operations (§ 91.176(a) and (b)). If a person receives training and an endorsement for only one EFVS operation in § 91.176, then seeks to conduct an additional EFVS operation for which that person has not received training, § 61.66(c) requires that person to receive ground and flight training and an endorsement appropriate to the additional EFVS operation to be conducted. AC 61–65 will contain sample endorsements for use by authorized training providers when endorsing logbooks or training records pursuant to § 61.66(a)(1), (b)(1) and (c)(2).

The training requirements in new § 61.66(a), (b), and (c) differ slightly from what was proposed in the NPRM as a result of comments and revisions, which are discussed in more detail below.

a. Separate Training for EFVS Operations to 100 Feet Above the TDZE and EFVS Operations to Touchdown and Rollout

Dassault Aviation commented that it favors separate training for EFVS operations to 100 feet above the TDZE and for EFVS operations to touchdown and rollout. It also commented that training for EFVS operations to touchdown and rollout should automatically include training for EFVS operations to 100 feet above the TDZE.

The FAA will not require separate training programs for the two types of EFVS operations, nor will it require training for EFVS operations to touchdown and rollout to automatically include training for EFVS operations to 100 feet above the TDZE. The FAA has adopted ground and flight training requirements with sufficient flexibility to achieve both the desired safety benefits and training efficiencies. While the rule does not require separate training for the two types of EFVS operations, the FAA notes that the training must address the operations the EFVS operator is authorized to conduct. Under certain circumstances, an operator authorized to conduct EFVS operations to touchdown and rollout might find it necessary to conduct EFVS operations to 100 feet above the TDZE. For example, if the pilot monitoring display is inoperative, the flightcrew may not conduct an EFVS operation to touchdown and rollout, but they may conduct an EFVS operation to 100 feet above the TDZE provided they meet all applicable regulatory requirements, including training to conduct EFVS operations to 100 feet above the TDZE. Accordingly, an operator may elect for its pilots to receive training for both types of EFVS operations.

b. EFVS and Aircraft-Specific Training

A couple of commenters raised concerns about aircraft-specific EFVS training. GAMA commented that proposed § 61.31 should specifically enable a pilot who is trained in EFVS operations on one airplane model to be EFVS-qualified on multiple airplane types. GAMA noted that FAA FSBs have authorized pilots trained on one airplane model for EFVS to be EFVS-qualified on another airplane, such as on the Falcon 900 and Falcon 2000. GAMA further noted that proposed § 61.31 did not recognize the FSB credit that currently exists.

Rockwell Collins commented that it assumed the training proposed by the FAA could be performed during ground/simulator training using a ''generic'' aircraft type, given that initial EFVS training includes an introduction to EFVS image characteristics, such as infrared-based sensor imagery, determining EFVS-equivalent visibility, image artifacts, and other items. It asked whether training could carry over to multiple aircraft types with similar EFVS installations and noted that this could allow training companies to provide generic training packages.

Section 61.66, proposed as § 61.31, does not reflect GAMA's request because § 61.66(a) and (b) do not require a pilot to receive training on each specific combination of EFVS and aircraft model for which the pilot is qualified to fly. Accordingly, as Rockwell Collins requested, training obtained pursuant to § 61.66 may carry

[38] Under part 121 and part 135, the term ''training program'' is a broad term that encompasses all curriculums in the air carrier's approved training program. Therefore, part 119 certificate holders operating under part 121 or part 135 would not have an EFVS training program; they would have an EFVS training curriculum as part of their approved training program. For purposes of part 119 certificate holders operating under part 121 or part 135, the term ''training program'' in § 61.66 means training curriculum.

over to multiple aircraft types with similar EFVS installations. The intent of § 61.66 is to establish minimum standards for a broad range of operators who may be operating various types of aircraft and EFVS equipment. The FAA has revised the language in § 61.66, however, to make clear that the training and endorsements for EFVS operations must be specific to category of aircraft. This requirement is consistent with the language proposed in § 61.57(i) requiring an EFVS proficiency check to be accomplished in the category of aircraft for the EFVS privilege sought.

In addition to the training requirements of part 61, an operator must comply with any training requirements specified in the part under which the operator conducts operations. Additionally, an operator's OpSpec, MSpec, or LOA for EFVS operations may contain specific training requirements. The FAA notes that this rule provides operators with the flexibility to develop training programs that address their specific operational requirements. Furthermore, for part 121, 135, and 91 subpart K operators, the FAA requires that a pilot obtain training in the EFVS-equipped aircraft in which the pilot expects to conduct operations, and that an operator's approved training program address training and proficiency for each specific combination of EFVS and aircraft model applicable to that operator and its EFVS operations. FSB reports also provide recommendations for training, checking, currency, recent flight experience, and special emphasis areas.

c. Adaptation Period Prior to Using an EFVS in Flight Operations

The Aerospace Medical Association commented that during B–787 training, one of their members experienced a habituation period when utilizing the HUD as a primary flight display and the instrument panel as secondary information. It believes the FAA should consider a similar habituation period for EFVS. The commenter stated that the habituation period should provide pilots with enough time to become accustomed to EFVS prior to flying solo or during actual instrument meteorological conditions (IMC). It asserted that use of simulators should also be considered for training.

The FAA believes that the time necessary to meet the EFVS training requirements will provide pilots with the necessary habituation period. Furthermore, § 61.66(g) already states that a pilot may use a level C or higher full flight simulator (FFS) equipped with a daylight visual display and an EFVS to meet the flight training requirements of § 61.66(b).

Boeing commented that § 61.31(l) already exists and contains the exceptions to the requirement for a type rating. Boeing recommended that the FAA move the existing regulations in § 61.31(l) to § 61.31(m) and use § 61.31(l) for the proposed additional training required for EFVS operations. Boeing further stated that this will prevent having two different sections with the same number. This revision is unnecessary because the FAA is adopting new § 61.66 instead of proposed § 61.31.

d. Revisions To Clarify Training Requirements in § 61.66(a), (b) and (c)

Section 61.66(a), (b), and (c) now require pilots to receive EFVS ground, flight, and supplementary training from an ''authorized training provider'' under an FAA approved training program.[39] The FAA is using the term ''authorized training provider,'' rather than ''authorized instructor'' as proposed in the NPRM, to underscore that all EFVS training must be accomplished in accordance with an FAA approved training program under 14 CFR parts 91, 91 subpart K, 121, 125, 135, 141, or 142. This revision is consistent with the NPRM, which explained that the FAA would require persons to receive EFVS training under an FAA approved training program to ensure that pilots are trained and tested to a specific standard and that the training program content supports the EFVS operation to be conducted. Because the proposed rule always intended for EFVS training to take place under an approved training program, the only authorized instructors would be those instructors working for training providers with approved training programs, such as instructors employed by part 141 pilot schools, part 142 training centers, and part 119 certificate holders.

While an FAA approved training program is not required under part 125, § 61.66 requires a part 125 operator to accomplish EFVS training in accordance with an FAA approved training program. A part 125 operator may accomplish § 61.66 EFVS training in accordance with an FAA approved training program offered at a part 141 pilot school or a part 142 training center.[40] Alternatively, a part 125 operator may submit an EFVS training program to the FAA for approval.

Under part 141, the FAA may approve an EFVS training course in accordance with § 141.11 and appendix K to part 141, paragraph 9, Special Operations Course, which contains the minimum curriculum requirements for both aeronautical knowledge and flight training pertaining to special operations courses. A special operations course for EFVS must also meet the applicable parts of FAA regulations that pertain to that special operations course. Accordingly, an EFVS training course must meet the requirements of § 61.66 in addition to the minimum curriculum requirements in appendix K to part 141.

Because training programs already exist for persons conducting EFVS operations to 100 feet above the TDZE, there is already a cadre of training instructors qualified to administer training on the subjects and tasks set forth in § 61.66(a)(2) and (b)(2) that are applicable to EFVS operations to 100 feet above the TDZE.

As a result of this final rule, new training programs for EFVS operations to touchdown and rollout will be developed. Section 61.66 requires persons to obtain EFVS training from an authorized training provider under an FAA approved training program. However, before persons can receive training on EFVS operations to touchdown and rollout from an authorized training provider, there must first be a cadre of training instructors qualified and authorized to administer the training. The FAA recognizes that there will be an initial period when training providers may provide training and evaluation without meeting certain qualification requirements in order to establish an initial cadre of instructors. AC 90–106A contains the FAA's policy for initiating and building a cadre of authorized training instructors qualified to administer training on EFVS operations to touchdown and rollout.

The FAA added language to § 61.66(a)(1) and (b)(1) to make clear that the ground and flight training for EFVS operations, and the respective endorsements, must be specific to the category of aircraft for which the person is seeking the EFVS privilege. It has always been the FAA's intent to require the EFVS training to be category specific. This requirement is consistent with the language proposed in § 61.57(i) requiring an EFVS proficiency check to be accomplished in the category of aircraft for the EFVS privilege sought.

[39] Unless otherwise excepted in § 61.66(h), the training requirements in § 61.66(a), (b), and (c) apply to any pilot conducting EFVS operations under 14 CFR 91.176, including pilots conducting operations under part 91, part 91 subpart K, part 121, part 125, or part 135.

[40] However, based on the special rules in § 125.296, a part 125 operator may not use a part 141 pilot school to meet training, testing, or checking requirements under part 125.

The FAA is reorganizing the supplementary EFVS training requirements in § 61.66(c) (proposed as differences training) to be more consistent with § 61.66(a) and (b).[41] Accordingly, § 61.66(c)(1) requires a person to receive and log the ground and flight training specified in § 61.66(a) and (b) under an FAA approved training program appropriate to the EFVS operation to be conducted, and § 61.66(c)(2) requires that person to obtain a logbook or training record endorsement from an authorized training provider certifying the person is proficient in the use of EFVS for the EFVS operations to be conducted. These revisions are consistent with proposed § 61.31(l)(6)(i), which would have required the person to obtain the flight training and endorsement specified in § 61.66(b) appropriate to the additional EFVS operations to be conducted.

The FAA is requiring the supplemental EFVS training in § 61.66(c) to consist of ground and flight training on the subjects and tasks specified in (a)(2) and (b)(2) appropriate to the additional EFVS operation to be conducted, as opposed to only flight training which was what the NPRM proposed in § 61.31(l)(6). This change to the regulatory text is consistent with the discussion in the NPRM,[42] where the FAA explained that a pilot trained to conduct EFVS operations to 100 feet above the TDZE would not be required to complete the full training program applicable to EFVS operations to touchdown and rollout if he or she later decided to conduct EFVS operations to touchdown and rollout. Instead, he or she would be required to complete only that portion of the full training program addressing the differences between the two operations. A full training program consists of both ground and flight training. The FAA therefore intended the supplemental EFVS training to consist of both ground and flight training. The FAA inadvertently omitted ground training, however, in its proposed regulatory text. The FAA is adding ground training to § 61.66(c) to clarify that supplemental EFVS training includes ground training on the subjects specified in § 61.66(a)(2) in addition to flight training on the tasks specified in § 61.66(b)(2) appropriate to the additional EFVS operation to be conducted.

The FAA is also requiring the supplemental EFVS training to be specific to the category of aircraft for which the person is seeking the EFVS privilege, which is consistent with the training requirements in § 61.66(a) and (b) and with the recent flight experience and refresher training requirements in § 61.66(d) and (e).

The FAA is not permitting a person to receive a proficiency check in lieu of the supplemental EFVS training, as originally proposed in § 61.31(l)(6)(ii). Nor is the FAA permitting a person to receive a proficiency check in lieu of the initial ground and flight training, as originally proposed in § 61.31(l)(7). The FAA is not adopting these proposed proficiency checks because they cannot be applied as a practical matter and they are inconsistent with the FAA's reasons for establishing EFVS training requirements. During a proficiency check, a pilot must satisfactorily perform certain flight tasks. Prior to being checked on the flight tasks, a pilot must first receive training on the flight tasks. It is therefore impractical to permit a proficiency check on the tasks listed in § 61.66(b)(2) in lieu of initial training on those tasks. Furthermore, as explained in the NPRM, the FAA, EFVS manufacturers, and operators of EFVS-equipped aircraft have all recognized the need for specialized training in the use of EFVS. The FAA proposed to establish EFVS training requirements to ensure that pilots meet minimum requirements to operate EFVS equipment, that they are trained and tested to a standard, and that an appropriate level of public safety is maintained. The FAA now recognizes that proposed § 61.31(l)(6) and (l)(7) would have permitted a pilot who is untrained and inexperienced with the use of EFVS to receive a proficiency check on the tasks set forth in § 61.66(b)(2) in lieu of receiving the initial training on those tasks. This was not the FAA's intent as such a requirement would contravene the FAA's reasons for establishing EFVS training requirements. The FAA notes, however, that pilots who have satisfactorily completed training on EFVS operations to 100 feet above the TDZE prior to this final rule will not be required to receive duplicative training under § 61.66(a) and (b). Instead, those pilots will be given credit for their previously obtained training pursuant to § 61.66(h)(4), which is discussed in more detail below.

The FAA is also revising § 61.66(a)(2) and (b)(2)(vii) as a result of a comment raised by GAMA. GAMA recommended that the FAA align the terminology in proposed § 61.31(l)(4)(vii) with the terminology ''EFVS image,'' ''EFVS sensor imagery,'' and ''flight information and flight symbology,'' used in § 91.176. Sections 91.176(a)(1)(i)(B) and (a)(1)(i)(E) now use the phrase ''aircraft flight information and flight symbology,'' rather than ''aircraft flight symbology.'' The FAA agrees with GAMA that the terminology should be consistent in part 61. The FAA is therefore revising § 61.66(b)(2)(vii), previously proposed as § 61.31(l)(4)(vii), to include a reference to required aircraft flight information and flight symbology, as used in § 91.176. For consistency, the FAA is also revising § 61.66(a)(2), previously proposed as § 61.31(l)(2), by adding new paragraph (ii) to include EFVS sensor imagery and required aircraft flight information and flight symbology as subjects of ground training for EFVS operations.

Additionally, the FAA is revising § 61.66(a)(2)(i) to read ''Airplane Flight Manual or Rotorcraft Flight Manual limitations'' instead of ''AFM limitations'' because EFVS operations apply to both airplanes and rotorcraft. The reference to ''Airplane Flight Manual or Rotorcraft Flight Manual limitations'' includes the limitations found in the Airplane Flight Manual Supplement or Rotorcraft Flight Manual Supplement as well as those found in the AFM or RFM.

The FAA is also revising certain terms and concepts in § 61.66 to be consistent with current regulations, including revisions resulting from several rulemaking actions that were published after the EFVS proposal was published.[43] The FAA is replacing the terminology ''other endorsement'' with ''training record endorsement'' in § 61.66(a)(1)(ii), (b)(1)(ii), and (c)(2) for consistency with terminology used in other sections of part 61.

[41] In the NPRM, the FAA described the additional EFVS training requirements in proposed § 61.31(l)(6) as differences training. Upon further reflection, the FAA has decided not to use the term ''differences training'' because it is a term of art used by air carriers, which may cause confusion in the context of additional EFVS training. Under part 121 subpart N and part 135 subpart H, differences training is required if a flightcrew member will serve on a variation of a particular aircraft type that has pertinent differences from the base aircraft type. To avoid confusion, the FAA is describing the additional EFVS training requirements as ''supplementary EFVS training.''

[42] ''Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems.'' 78 FR at 34943 (June 11, 2013).

[43] These rulemaking actions include the final rules ''Pilot Certification and Qualification Requirements for Air Carrier Operations,'' 78 FR 42374 (Jul. 15, 2013), ''Certified Flight Instructor Flight Reviews; Recent Pilot in Command Experience; Airmen Online Services,'' 78 FR 56828 (Sept. 16, 2013), and ''Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers,'' 78 FR 67800 (Nov. 12, 2013).

2. Recent Flight Experience and EFVS Refresher Training for Persons Conducting EFVS Operations (§ 61.66(d) and (e))

Section 61.66(d) requires a person to perform and log six instrument approaches as the sole manipulator of the controls using an EFVS under any weather conditions in the category of aircraft for which the person is seeking the EFVS privilege. In order to manipulate the controls of an aircraft or act as pilot in command of an aircraft during an EFVS operation, these six instrument approaches must be accomplished within six calendar months preceding the month of the flight. These instrument approaches may be performed in either day or night conditions. One approach must terminate in a full stop landing. For a person authorized to conduct EFVS operations to touchdown and rollout, that person must conduct the full stop landing using the EFVS. These requirements were previously proposed in § 61.57(h). The FAA is adopting these requirements in new § 61.66(d) with two substantive changes. First, the FAA is clarifying that recent flight experience may be performed in either day or night conditions. Second, to be consistent with the requirement originally proposed for proficiency checks in § 61.57(i), the FAA is clarifying that recent flight experience must be performed in the same category of aircraft for which the pilot holds EFVS privileges under § 61.66(a) and (b).

Section 61.66(e) requires a person who has failed to meet the recent flight experience requirements of paragraph (d) for more than six calendar months to reestablish EFVS currency only by satisfactorily completing an approved EFVS refresher course in the category of aircraft for which the person is seeking the EFVS privilege. The EFVS refresher course must consist of the subjects and tasks specified in § 61.66(a)(2) and (b)(2) applicable to the EFVS operations to be conducted. Section 61.66(e) differs from the proposal in the NPRM in that it more closely resembles the instrument proficiency check requirements in § 61.57(d) and rather than calling the mechanism by which a person reestablishes EFVS currency a proficiency check, the FAA is calling it a refresher course.

In the NPRM, proposed § 61.57(i) would have required a person who did not meet the recent flight experience requirements in proposed § 61.57(h) to pass an EFVS proficiency check to act as PIC in an EFVS operation or to manipulate the controls of an aircraft during an EFVS operation. However, the discussion of proposed § 61.57(i) in the NPRM obscured the proposed requirement by stating that a person acting as PIC or a person manipulating the controls of an aircraft in an EFVS operation would either have been required to meet the proposed EFVS recent flight experience requirements or pass an EFVS proficiency check. Because of the statement in the NPRM, proposed § 61.57(i) could have been interpreted one of two ways. Proposed § 61.57(i) could have meant that a pilot who did not meet the recent flight experience requirements of proposed § 61.57(h) could have reestablished EFVS currency only by completing an EFVS proficiency check. Alternatively, proposed § 61.57(i) could have meant that a pilot who did not meet the recent flight experience requirements in § 61.57(h) could have reestablished EFVS currency by either: (1) Satisfying the EFVS recent flight experience requirements in proposed § 61.57(h); or (2) completing an EFVS proficiency check pursuant to § 61.57(i).

The FAA's intent was to require a person who did not meet the recent flight experience requirements to reestablish EFVS currency only by completing an EFVS proficiency check, similar to the instrument proficiency check requirements in § 61.57(d). Upon further reflection, the FAA has decided that the term proficiency check is inappropriate in the context of reestablishing EFVS currency. Unlike an instrument proficiency check, which is based on the instrument practical test standards, an EFVS proficiency check would not have been based on any standards. Rather, an EFVS proficiency check would have consisted of the training tasks specified in proposed § 61.31(l). Because proposed § 61.57(h) would have resulted in a person receiving additional training rather than a proficiency check based on performance standards, the FAA has decided to call it an EFVS refresher course. Additionally, because proposed § 61.57(h) would have required the additional training to consist of the tasks in proposed § 61.31(l), which proposed both ground and flight training, the FAA is requiring the EFVS refresher course to consist of the ground subjects and the flight tasks specified in paragraphs (a)(2) and (b)(2) as applicable to the EFVS operation to be conducted.

To avoid ambiguity, the FAA is restructuring § 61.66(e) to more closely resemble the language for instrument recent flight experience in § 61.57(d) with respect to the six calendar month timeframe. The FAA believes that using language from § 61.57(d), which pilots are already familiar with, will better inform pilots on how to remain current for EFVS operations under § 61.66. Accordingly, under new § 61.66(e), if a person has failed to meet the EFVS experience requirements of § 61.66(d) for more than six calendar months—meaning it has been more than six months since the person was last current to perform an EFVS operation, that person may reestablish EFVS currency only by satisfactorily completing an EFVS refresher course pursuant to § 61.66(e). The FAA notes that the six calendar month period described in § 61.66(d) begins when a pilot satisfactorily completes the ground and flight training and obtains the necessary endorsements under § 61.66(a) and (b).[44]

Section 61.66(e) contains a substantive change from what was proposed in that it provides a six-month grace period for pilots who have failed to maintain the EFVS recent flight experience requirements of § 61.66(d). The proposed regulatory text would have required a pilot to receive an EFVS proficiency check if he or she had not performed and logged the tasks specified in § 61.66(d) within the 6 calendar months preceding the month of the flight. Under new § 61.66(e), however, a pilot may fail to maintain EFVS currency for up to 6 calendar months without having to obtain refresher training. As with instrument recent flight experience, a pilot has an additional 6 calendar months to complete the recent EFVS flight experience tasks specified in § 61.66(d) without having to take an EFVS refresher course to reestablish his or her EFVS privileges.[45] In other words, a pilot has six months from the date that he or she was last current to conduct EFVS operations to perform the EFVS

[44] *See* Legal Interpretation, Letter to Mr. Joshua Wynne from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Aug. 1, 2008) (explaining that the six calendar month period described in § 61.57(c) begins when a pilot successfully completes his or her practical test). ''By passing the practical test, the pilot has demonstrated his or her instrument proficiency.'' *Id.* Similarly, the six calendar month period described in § 61.66(d) begins when a pilot successfully completes the EFVS training and obtains the necessary endorsements.

[45] *See* ''Pilot, Flight Instructor, and Pilot School Certification; Technical Amendment,'' 76 FR 78141, 78142 (Dec. 16, 2011) (''[A] pilot who has failed to maintain instrument currency for more than six calendar months may not serve as pilot in command under IFR or in weather conditions less than the minimums prescribed for visual flight rules (VFR) until completing an instrument proficiency check. A pilot whose instrument currency has been lapsed for less than six months may continue to reestablish instrument currency by performing the tasks and maneuvers required in [§ 61.57(c)].'')

recent flight experience required by § 61.66(d), which may be accomplished in any weather conditions.[46] If a pilot fails to maintain EFVS currency for more than 6 calendar months, however, that pilot may not manipulate the controls or act as PIC of an aircraft during an EFVS operation until he or she completes an EFVS refresher course.

The FAA never intended the requirements of § 61.66(d) to replace the instrument experience requirements of § 61.57(c). In fact, the instrument experience requirements specified in § 61.57(c) lay the foundation for conducting safe EFVS operations by ensuring pilots are proficient in conducting instrument approach procedures. The FAA structured § 61.66(d) to enable pilots to satisfy both the instrument experience requirements and the EFVS operating experience requirements during the same flight or series of flights. For example, a person performing an EFVS operation on an instrument approach under IMC may be able to log that instrument approach under § 61.57(c) provided he or she is operating the aircraft solely by reference to the instruments. Under certain conditions, the pilot may have to remove the EFVS sensor image for a portion of the approach in order to operate the aircraft solely by reference to the instruments. In weather conditions that exceed the sensor's capabilities, such as clouds, dense fog, or heavy rain, the pilot may not have to remove the EFVS sensor image if it provides no visual advantage over that of natural vision. However, a person performing an instrument approach using EFVS under VMC would not be able to log that approach under § 61.57(c), unless that person were using a HUD-compatible view limiting device, which enabled the person to perform the approach solely by reference to the instruments. A person would be required to comply with the safety pilot requirements in § 91.109(c) if that person performs an instrument approach with an EFVS in simulated weather conditions using a view limiting device.

[46] During this six-month grace period, a person may not act as PIC of an EFVS operation but may manipulate the controls under the supervision of a PIC properly qualified and current for the purpose of reestablishing currency. *See* Legal Interpretation, Letter to Joseph P. Carr from John H. Cassady, Assistant Chief Counsel for Regulations (Nov. 7, 1984) (discussing the second six-month period as it pertains to a pilot regaining his or her instrument currency and noting that, during this second six-month period, a pilot is prohibited from acting as PIC under IFR or below VFR minimums).

3. EFVS Recent Flight Experience

Boeing commented that proposed § 61.57(h)(1) and (h)(2)(i) should specify that persons should obtain recent flight experience and proficiency checks using the same type of EFVS and in the same category and type of aircraft, if appropriate. Boeing stated that characteristics and controls may be different among different EFVS installations, and that there may be differences in the sensor position and out-the-window view among different airplanes of the same category, such as an ERJ–170 and a Boeing B747.

While it is unclear whether Boeing is referring to category, class, and type as defined in § 1.1, the FAA has decided against requiring persons to obtain recent flight experience using the same type of EFVS in the same category, class, and type of aircraft. It believes that imposing such requirements would be unreasonable. The FAA has decided, however, to require persons to obtain recent flight experience using an EFVS in the same category of aircraft because the characteristics and controls of different categories of aircraft, such as rotorcraft and airplane, may be significantly different. From a practical perspective, operators train pilots on the specific equipment they will fly in accordance with their approved training programs. The FAA has decided to establish minimum standards in § 61.66(d) and (e), which apply to operators who may be operating a broad range of aircraft and EFVS equipment. The FAA recommends, however, that persons obtain recent flight experience using EFVS-equipped aircraft in which the pilot expects to conduct operations. The FAA also recommends that operators address training and proficiency for each specific combination of EFVS and aircraft model in their approved training programs. FSB reports also provide recommendations for training, checking, currency, recent flight experience, and special emphasis areas.

Boeing also asked the FAA for clarification about whether contact and visual approaches under IFR can satisfy the requirement for recent flight experience using EFVS. The FAA notes that although persons may conduct contact approaches and visual approaches under instrument flight rules, these approaches are not instrument approach procedures, as defined in § 1.1. Therefore, persons cannot use these approaches to meet the EFVS recent flight experience requirements of § 61.66(d).

4. Persons Authorized To Conduct EFVS Refresher Training

Section 61.66(e)(2) lists the persons authorized to conduct EFVS refresher training. This list differs from the proposed list of persons authorized to conduct EFVS proficiency checks in § 61.57(i) based on comments from Boeing and based on the FAA's own review of the proposal. More specifically, the FAA is using the term ''authorized training provider'' in paragraph (e)(2) rather than the proposed term ''authorized instructor'' as a result of Boeing's comment, and the FAA is not adopting proposed § 61.57(i)(1), (i)(2), (i)(3), or (i)(5).

Section 61.66(e)(2) requires an EFVS refresher course to be conducted by an authorized training provider who meets the training and recent flight experience requirements in § 61.66. This requirement differs from what was proposed in § 61.57(i)(4), which would have allowed authorized instructors to perform EFVS proficiency checks.[47] The FAA's description of authorized instructor in proposed § 61.57(i)(4) was confusing as evident from Boeing's comment. Boeing commented that the FAA uses different descriptions for instructors who provide initial training under proposed § 61.31(l) and those who provide proficiency checks under proposed § 61.57(i). It recommended that the FAA revise proposed § 61.57(i) to make it parallel proposed § 61.31(l), which uses the term ''authorized instructor'' to describe those who are qualified to provide initial training. As previously discussed, the FAA is using the term ''authorized training provider,'' rather than the proposed term ''authorized instructor,'' in § 61.66(a) and (b) to clarify that all EFVS training must be accomplished in accordance with an FAA approved training program under 14 CFR parts 91, 91 subpart K, 121, 125, 135, 141, or 142. The FAA agrees with Boeing that the FAA should use the same description for instructors who provide initial training under § 61.66(a) and (b) and for instructors who provide EFVS refresher training under § 61.66(e). Accordingly, the FAA is using the term ''authorized training provider'' in § 61.66(e)(2).

Section 61.66(e)(2) requires an authorized training provider to meet the training requirements of § 61.66 and, if conducting EFVS operations in an aircraft during the course of refresher training, the recent flight experience

[47] As explained above, the proposed EFVS proficiency check is now called EFVS refresher training.

requirements of § 61.66.[48] This requirement is consistent with the NPRM because proposed § 61.57(i)(4) would have required the authorized instructor to meet the training requirements for EFVS operations specified in proposed § 61.31(l) and, if conducting EFVS operations in an aircraft, meet the recent flight experience requirements of proposed § 61.57.

A person may receive an EFVS refresher course from an authorized training provider under 14 CFR parts 141 or 142.[49] Therefore, § 61.66(e)(2) encompasses instructors under parts 141 and 142.[50]

The FAA finds it unnecessary to adopt proposed § 61.57(i)(1), (i)(2), (i)(3), or (i)(5).

The FAA is not adopting proposed § 61.57(i)(1), which would have allowed FAA inspectors or designated examiners to conduct EFVS proficiency checks, because a person cannot obtain EFVS refresher training from an FAA inspector or designated examiner.

The FAA is not adopting proposed § 61.57(i)(2), which would have allowed persons who are authorized by the U.S. Armed Forces to perform EFVS proficiency checks to conduct EFVS proficiency checks under § 61.66(e), previously proposed as § 61.57(i), provided the person being administered the check was also a member of the U.S. Armed Forces. Instead, the FAA has decided to create a new paragraph, § 61.66(f), which solely addresses U.S. military pilots and former U.S. military pilots and which clarifies that EFVS proficiency checks administered in the U.S. Armed Forces may satisfy the recent flight experience requirements in § 61.66(d). This paragraph is discussed in more detail below.

The FAA is not adopting proposed § 61.57(i)(3), which would have permitted company check pilots who are authorized to perform EFVS proficiency checks under parts 121, 125, or 135, or subpart K of part 91, to administer EFVS proficiency checks to pilots who are employed by the operator or fractional ownership program manager. The FAA finds it impractical to include company check pilots in the list of persons authorized to administer EFVS refresher training. The FAA also finds it unnecessary to include persons authorized to administer EFVS training under parts 121, 125, 135, or part 91 subpart K in the list of persons authorized to administer EFVS refresher training because, as explained in section III.E.8.c.of this preamble, § 61.66(h)(3) excepts parts 121, 125 (including part 125 LODA holders), 135, and 91 subpart K pilots from the EFVS recent flight experience requirements of § 61.66(d). Rather than meeting recent flight experience requirements of § 61.66(d), or reestablishing EFVS currency under § 61.66(e), pilots conducting EFVS operations for part 91 subpart K, part 121, part 125, and part 135 operators will be checked on EFVS tasks and maneuvers under their respective parts.

Boeing commented that proposed § 61.57(i)(3) should have included contract pilots of an operator or fractional ownership program manager because some operators use contract pilots and instructors for training. While the FAA agrees with Boeing's comment, the FAA's decision to no longer adopt proposed § 61.57(i)(3) obviates addressing Boeing's concern.

The FAA is not adopting proposed § 61.57(i)(5), which would have permitted persons to perform EFVS proficiency checks if they were approved by the FAA to perform EFVS proficiency checks, as unnecessary because § 61.66(e)(2) already allows persons to provide EFVS refresher training if they are authorized by the Administrator to do so.

5. Revisions to § 61.57

The FAA is revising certain terms and concepts in § 61.57. The FAA is revising § 61.57(e)(2) and (e)(3) to correct drafting errors that occurred in a previous rulemaking. A drafting error occurred in paragraph (e)(2), which stated ''when the pilot is engaged in a flight operation under parts 91 and 121 for that certificate holder.'' A drafting error also occurred in paragraph (e)(3), which said ''when the pilot is engaged in a flight operation under parts 91 and 135 for that certificate holder.'' The FAA is revising ''and'' to ''or'' to state ''parts 91 or 121'' and ''parts 91 or 135,'' respectively.

The FAA is also revising § 61.57(e)(2) to remove a reference to § 121.435, which is currently a reserved section and has contained no requirements since March 12, 2014.[51]

6. Military Pilots and Former Military Pilots in the U.S. Armed Forces (§ 61.66(f))

The FAA is creating a new paragraph, § 61.66(f), which solely addresses military pilots and former military pilots in the U.S. Armed Forces. This new paragraph clarifies the regulations applicable to these pilots.

Under § 61.66(f), a military pilot or former military pilot in the U.S. Armed Forces is excepted from the ground and flight training requirements in § 61.66(a) and (b) if he or she can document satisfactory completion of ground and flight training in EFVS operations by the U.S. Armed Forces. This requirement differs from the NPRM, where the FAA proposed to permit EFVS proficiency checks administered in the U.S. Armed Forces in lieu of the EFVS ground and flight training requirements in paragraphs (a) and (b). A pilot obtains a proficiency check in the U.S. Armed Forces after receiving the required ground and flight training. Therefore, the FAA has decided to accept documentation of EFVS ground and flight training by the U.S. Armed Forces, rather than an EFVS proficiency check, in lieu of the ground and flight training requirements in § 61.66(a) and (b). Accordingly, the training requirements in (a) and (b) do not apply to a military or former military pilot in the U.S. Armed Forces if that person can document satisfactory completion of ground and flight training in EFVS operations by the U.S. Armed Forces. The FAA believes this change provides clarity and consistency for military pilots and former military pilots in the U.S. Armed Forces.

Under § 61.66(f)(3), a military pilot or former military pilot in the U.S. Armed Forces may satisfy the recent flight experience requirements in paragraph (d) if he or she documents satisfactory completion of an EFVS proficiency

[48] An EFVS operation is defined as an operation in which visibility conditions require the use of EFVS. If an authorized training provider will be conducting an EFVS operation in an aircraft during the course of EFVS refresher training, that authorized training provider must be EFVS current in accordance with § 61.66(d) and (e).

[49] Section 61.66(e) does not apply to operators under parts 91 subpart K, 121, 125, and 135 because § 61.66(h)(3) excepts these operators from the recent flight experience requirements of § 61.66(d).

[50] Section 61.66(e) also enables a person to receive an EFVS refresher course from an authorized training provider under part 61. The FAA is in the process of developing guidance to approve training programs conducted under part 61.

[51] Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers, 78 FR 67841 (Nov. 12, 2013). Boeing commented that § 121.437 no longer exists and that the FAA should replace the regulatory reference with §§ 121.435 or 121.436. The FAA agrees with Boeing and is replacing the regulatory reference with § 121.436. A rulemaking action entitled ''Pilot Certification and Qualification Requirements for Air Carrier Operations'' (78 FR 42374) removed § 121.437 from the regulations on July 15, 2013, and added new §§ 121.435 and 121.436. Section 121.435 contained the existing certificate requirements for part 121 pilots that were in effect until July 31, 2013. After that date, the requirements of § 121.436 began to apply. The FAA notes that § 121.435 is currently reserved. Therefore, the correct regulatory reference is § 121.436. The EFVS NPRM did not reflect these changes because it was published prior to the July 15, 2013 rulemaking action.

check in the U.S. Armed Forces within 6 calendar months preceding the month of the flight. The check must be conducted by a person authorized by the U.S. Armed Forces to administer the check and the person receiving the check must have been a member of the U.S. Armed Forces at the time the check was administered. This requirement stems from proposed § 61.57(i)(2), which would have permitted EFVS proficiency checks received in the U.S. Armed Forces as a means of satisfying the recent flight experience requirements of § 61.66(d). Proposed § 61.57(i)(2) was confusing, however, because a pilot operating under part 61 would not have the option of going to a person authorized by the U.S. Armed Forces to perform EFVS proficiency checks, and a military pilot receiving an EFVS proficiency check in the U.S. Armed Forces would be receiving the check for military purposes—not for the purpose of satisfying the EFVS recent flight experience requirements of § 61.66(d). The FAA is therefore adopting new § 61.66(f)(3) to clarify that EFVS proficiency checks administered in the U.S. Armed Forces may satisfy the recent flight experience requirements in § 61.66(d).

7. Use of Full Flight Simulators (§ 61.66(g))

Section 61.66(g) states that a person may use a level C or higher full flight simulator (FFS) equipped with an EFVS to meet the flight training, recent flight experience, and refresher training requirements of § 61.66. Section 61.66(g) is consistent with the NPRM, where proposed § 61.31(l)(5), § 61.57(h)(2), and § 61.57(i) would have permitted the use of FFS to meet the flight training, recent flight experience, and proficiency check requirements of proposed § 61.31 and § 61.57. The FAA has decided to consolidate these proposed requirements into one section for clarity. Accordingly, § 61.66(g) now contains the FFS requirements for meeting the flight training, recent flight experience, and refresher training requirements of § 61.66.

The FAA is using the term ''full flight simulator'' in § 61.66(g), rather than ''simulator'' as proposed, because the term ''simulator'' in § 1.1 has been replaced with the term full flight simulator (FFS). Additionally, § 61.66(g) clarifies that the FFS must be evaluated and qualified by the National Simulator Program for EFVS operations, be qualified and maintained in accordance with part 60, or be a previously qualified device in accordance with § 60.17, and be approved by the FAA for the tasks and maneuvers that will be performed in the FFS.

If a pilot is using a level C or higher FFS to meet the flight training requirements of § 61.66, the FFS must be equipped with a daylight visual display, as proposed in § 61.31(l)(5), because § 61.66(b)(2) requires certain flight training tasks to be conducted under both day and night conditions.[52] However, the FAA is not adopting the proposed requirement that a level C or higher FFS be equipped with a daylight visual display if being used to meet the EFVS recent flight experience requirements because § 61.66(d) authorizes a pilot to complete the recent flight experience in either day or night conditions.

8. Exceptions (§ 61.66(h))

The FAA is adopting several exceptions to the flight training, recent flight experience, and refresher training requirements in § 61.66.

a. Manipulating the Controls (§ 61.66(h)(1)(i), (ii), and (iii)

Under § 61.66(b), no person may manipulate the controls of an aircraft during an EFVS operation as specified in § 91.176(a) or (b) unless that person has received and logged flight training for the EFVS operation under a training program approved by the Administrator and obtained a logbook or training record endorsement from an authorized training provider certifying that the person has satisfactorily completed the flight training. The FAA now recognizes that, without an exception, § 61.66(b) would prohibit a person from manipulating the controls of an aircraft during an EFVS operation while he or she was receiving flight training in EFVS operations under an FAA approved training program. Immediately after the pilot received the required flight training and endorsement, however, he or she would be authorized to manipulate the controls of an aircraft during EFVS operations performed on his or her own.

A pilot should be permitted to manipulate the controls of an aircraft during an EFVS operation when that pilot is receiving flight training on EFVS operations under an FAA approved training program, provided the training provider's instructor is qualified under § 61.66 to perform the EFVS operation in the category of aircraft in which the training is being conducted. Accordingly, the FAA is adding new § 61.66(h)(1)(i) to allow manipulation of the controls during flight training.

The FAA also now recognizes that, without an exception, § 61.66(d) would prohibit a person from manipulating the controls of an aircraft during an EFVS operation conducted in the course of satisfying the recent flight experience requirements specified in paragraph (d). Similarly, without an exception, § 61.66(d) and (e) would prohibit a person from manipulating the controls of an aircraft during an EFVS operation conducted during an refresher course. Accordingly, the FAA is adding exceptions in paragraphs (h)(1)(ii) and (h)(1)(iii) to permit a person to manipulate the controls of an aircraft during an EFVS operation conducted in the course of satisfying the recent flight experience requirements and in the course of completing EFVS refresher training.

If a person whose currency had lapsed were to manipulate the controls of an aircraft during an EFVS operation performed in the course of satisfying the recent flight experience requirements, another individual would have to serve as PIC of the aircraft during that EFVS operation because a person may not act as PIC during an EFVS operation unless he or she meets the recent flight experience requirements specified in paragraph (d).[53] The individual serving as PIC during the EFVS operation must be qualified under § 61.66 to perform the EFVS operation in the category of aircraft in which the flight is being conducted. Similarly, if a person were to manipulate the controls of an aircraft during an EFVS operation performed in the course of completing an EFVS refresher course, the person administering the training would have to be qualified under § 61.66 to perform the EFVS operation in the category of aircraft in which the training was being conducted.

b. Exception to Ground and Flight Training (§ 61.66(h)(2))

The FAA is adding new § 61.66(h)(2) to provide personnel involved in certain research and development, EFVS certification, and operational suitability

[52] Part 60 requires level C and level D simulators to have daylight visual scenes. See Part 60, Table A1A Minimum Simulator Requirements. However, before the FAA adopted part 60 on May 9, 2008, the FAA required only level D simulators to have daylight visual scenes. Section 61.66(g)(1) permits persons to use previously qualified devices in accordance with § 60.17. Thus, § 61.66(g)(3) expressly requires a level C or higher FFS to be equipped with a daylight visual display if being used to meet the flight training requirements of § 61.66(b). This equipment requirement is necessary because some level C simulators qualified prior to the establishment of part 60 were not required to have daylight visual scenes.

[53] The FAA notes that, under § 61.66(d), recent flight experience may be accomplished in any weather conditions not just conditions that require the use of an EFVS.

determination activities an alternate means of meeting the training requirements of § 61.66(a) and (b). The FAA finds the addition is necessary because personnel involved in such activities, all of which may be conducted in aircraft issued an experimental certificate under § 21.191, may be otherwise unable to obtain training under an FAA-approved training program, as required by § 61.66(a) and (b).[54] For example, FAA personnel involved in EFVS certification and operational suitability determination activities receive training through other processes that are provided for and specified in internal FAA Orders. These processes may differ from those specified in § 61.66(a) and (b), but are approved and used by the FAA. Another example is an applicant who seeks to certify an EFVS based on new sensor technology for which an FAA-approved training course does not yet exist and an authorized instructor who can give the training is not yet available.

Accordingly, new § 61.66(h)(2) provides that the requirements specified in § 61.66(a) and (b) do not apply if a person is conducting a flight or series of flights in an aircraft issued an experimental airworthiness certificate for the purpose of research and development or showing compliance with regulations provided the person has knowledge of the subjects specified in paragraph (a)(2) of this section and has experience with the tasks specified in paragraph (b)(2) of this section applicable to the EFVS operations to be conducted. This provides some flexibility for tasks that might be specified in § 61.66(b)(2) but are not applicable to a particular research and development or show-compliance project.

In order to qualify under the exception in § 61.66(h)(2), an applicant must submit evidence to the FAA showing that he or she complies with § 61.66(h)(2), along with his or her program letter and application for an experimental certificate. The guidance material will address circumstances in which it is appropriate for an applicant to use this alternate means of meeting the additional training required for EFVS operations under § 61.66(a) and (b), the process an applicant may follow, and other related regulatory requirements.

[54] An FAA-approved training program means training acquired under part 141 or part 142, an FAA-approved training program under part 125 or part 91 subpart K, or an FAA-approved air carrier training program.

c. Exception to Recent Flight Experience Requirements (§ 61.66(h)(3))

As noted in the NPRM, parts 121, 125, 135, and 91 subpart K operators currently authorized to conduct EFVS operations must train, check, and qualify their pilots on EFVS in accordance with their OpSpec or MSpec. Existing regulations in parts 121, 135, and 91 subpart K require operators to provide training that ensures each crewmember is qualified on new equipment, facilities, procedures, and techniques, including modifications to aircraft.[55] Part 125 does not contain training requirements for pilots;[56] however, at a minimum, any person serving as a required flightcrew member for a part 125 operator must meet the EFVS training requirements in § 61.66.[57] The regulatory requirements to train crewmembers on EFVS are transparent within the relevant operating rules in 14 CFR. However, the requirement to be qualified for EFVS operations by one of the certificate holder's check airmen is not as clearly set forth in part 121, 125, 135, or 91 subpart K. The FAA is therefore revising §§ 91.1065, 125.287, 135.293, and appendix F to part 121[58] to provide greater clarity on the checking requirements for EFVS operations. Operators authorized to conduct EFVS operations will incorporate EFVS into existing recurrent training and checking to ensure pilots remain proficient on EFVS tasks and maneuvers. Because pilots will be checked on EFVS tasks and maneuvers under part 91 subpart K, part 121, part 125, and part 135, the FAA is adding § 61.66(h)(3), which excepts parts 121, 125 (including part 125 LODA holders), 135, and 91 subpart K pilots from the EFVS recent flight experience requirements in § 61.66(d).[59]

[55] 14 CFR 91.1081(e), 121.415(g), and 135.329(e).

[56] ''Under the part 125 regulatory design, reliance is placed upon tests and checks to ensure airman are proficient. These tests and checks are adequate to ensure an acceptable level of safety in part 125.'' 45 FR 67214 (October 9, 1980).

[57] Section 61.66 sets forth the specific contents for EFVS training. An EFVS training program—whether conducted by a part 121 air carrier, a part 135 operator, a part 142 training center, or a part 141 pilot school—must at a minimum include the content set forth in § 61.66(a) through (c).

[58] Because § 61.66(g) authorizes a pilot to use a level C or higher full flight simulator (FFS) equipped with an EFVS to meet the flight training, recent flight experience, and refresher training requirements of § 61.66, the FAA is also amending appendix H to part 121 to ensure that the EFVS proficiency check requirements added to appendix F will be completed in a level C or level D FFS.

[59] Because § 61.66(h)(3) excepts part 91 subpart K, part 121, part 125, and part 135 operators from the EFVS recent flight experience requirements in § 61.66(d), these operators will never lapse under § 61.66(d), which means these operators will never have to reestablish EFVS currency under § 61.66(e).

The exception in § 61.66(h)(3) is consistent with the instrument recency provisions, namely § 61.57(e)(2) and (e)(3), which except part 121 and 135 pilots from the instrument recent flight experience specified in § 61.57(c).[60] Section 61.66(h)(3) also excepts part 91 subpart K and part 125 operators (including part 125 LODA holders) from the recent flight experience requirements in § 61.66(d) because, as a practical matter, part 91 subpart K and part 125 operators (including part 125 LODA holders) accomplish instrument proficiency checks under §§ 91.1069 and 125.291 rather than completing the instrument recency tasks specified in § 61.57(c). Section 61.66(d) is modeled after the instrument recent flight experience requirements in § 61.57. To be consistent with the practical application of §§ 61.57, 91.1069 and 125.291, and to ensure that the FAA does not impose an additional burden on part 91 subpart K and part 125 operations, the FAA is excepting them from § 61.66(d). Instead, part 91 subpart K and part 125 operators (including part 125 LODA holders) will be treated similar to part 121 and part 135 operators in terms of EFVS checking requirements, as explained above, which is consistent with the way the FAA has been treating them in EFVS authorizations since 2004.

The exception in § 61.66(h)(3) states that the recent flight experience requirements of § 61.66(d) do not apply to a pilot employed by: A part 119 certificate holder authorized to conduct operations under part 121, 125, or 135; a part 125 LODA holder authorized to conduct operations under part 125; or a fractional ownership program manager authorized to conduct operations under part 91 subpart K, when the pilot is conducting an EFVS operation for that certificate holder, LODA holder, or program manager under parts 91, 121, 125, or 135, as applicable, provided the pilot is conducting the operation in accordance with the certificate holder's OpSpec, with the LODA holder's LOA, or with the program manager's MSpec for EFVS operations.

As with the recency exceptions in § 61.57, the exception from EFVS recency requirements set forth in § 61.66(h)(3) applies only when a pilot is conducting an EFVS operation for a

Thus, the practical effect of § 61.66(h)(3) is that part 91 subpart K, part 121, part 125, and part 135 operators are also excepted from the EFVS refresher course requirements in § 61.66(e).

[60] Section § 61.66(h)(3)(i) excepts part 121 and 135 operators from the EFVS recent flight experience requirements just as § 61.57(e)(2) and (e)(3) except part 121 and 135 operators from the instrument recent flight experience requirements.

part 119 certificate holder under part 91, 121, 125, or 135, for a LODA holder under part 125, or for a fractional ownership program manager under part 91 subpart K. The pilot would be required to comply with § 61.66(d) if he or she were to conduct an EFVS operation outside of the part 119 certificate holder's, the LODA holder's, or the part 91 subpart K program manager's operations. If a pilot conducting EFVS operations for either a part 119 certificate holder, a LODA holder, or a program manager has not satisfied the recent flight experience requirements specified in § 61.66(d) within six calendar months preceding the month of his or her flight, that pilot would still be deemed EFVS current (outside of the part 119 certificate holder's, the LODA holder's, or the program manager's operations) if he or she had accomplished a check on EFVS operations under part 91 subpart K, 121, 125, or 135 by an individual described in paragraph (e)(iii), (iv), or (v), as appropriate, provided it were obtained within six calendar months preceding the month of the flight.

d. Grandfather Clause (§ 61.66(h)(4))

In the NPRM, the FAA proposed § 61.31(l)(7)(ii), which would have excepted pilots from the new EFVS ground and flight training requirements if they satisfactorily completed a training program, proficiency check, or other course of instruction applicable to EFVS operations to 100 feet above the TDZE that is acceptable to the Administrator prior to March 13, 2019. Proposed § 61.31(l)(7) was intended to decrease the regulatory burden on pilots who have been safely conducting EFVS operations to 100 feet above the TDZE under § 91.175(l) and (m) and to provide pilot schools and training centers with adequate time to develop training programs that meet the proposed training requirements.

After further consideration, the FAA finds that proposed § 61.31(l)(7)(ii) would not have sufficiently reduced the regulatory burden on operators who have been conducting EFVS operations to 100 feet above the TDZE under § 91.175(l) and (m) as it focused only on pilot qualification requirements. Because this final rule should not cause any disruption to operators or pilots who have been conducting EFVS operations under § 91.175(l) and (m), the FAA is restructuring the proposed regulations to provide an adequate transition period for operators and pilots conducting EFVS operations to 100 feet above the TDZE. Accordingly, § 91.175(n) requires persons conducting EFVS operations to 100 feet above the TDZE to comply with either § 91.175(l) and (m) or § 91.176(b) until March 13, 2018.[61] Beginning on March 13, 2018, persons conducting EFVS operations to 100 feet above the TDZE must comply with § 91.176(b) and thus the training, recent flight experience and refresher training requirements set forth in § 61.66.

The FAA is adding an exception to § 61.66(h)(5) to clarify that, notwithstanding § 91.175(l)(5), persons conducting EFVS operations to 100 feet above the TDZE under § 91.175(l) and (m) prior to March 13, 2018, are not required to comply with the new training, recent flight experience, and refresher training requirements in § 61.66. Instead, during the transition period, persons may conduct EFVS operations to 100 feet above the TDZE just as they have been under § 91.175(l) and (m).[62] The FAA believes the new transition period is consistent with the discussion in the NPRM in that it decreases the regulatory burden on persons already conducting EFVS operations to 100 feet above the TDZE and it provides pilot schools and training centers with adequate time to develop training programs that meet the proposed training requirements.

Furthermore, the FAA is adopting § 61.66(h)(4), which excepts persons from the ground and flight training requirements in § 61.66(a) and (b) if they are conducting EFVS operations under § 91.176(b) and can document that prior to March 13, 2018, they have satisfactorily completed ground and flight training on EFVS operations to 100 feet above the TDZE. The FAA notes, however, that in order to conduct EFVS operations to touchdown and rollout, these persons must still complete the supplemental EFVS training pursuant to § 61.66(c).

Section 61.66(h)(4) is consistent with the intent of proposed § 61.31(l)(7)(ii), which was to decrease the regulatory burden on pilots already conducting EFVS operations to 100 feet above the TDZE by providing them with a reasonable means of demonstrating compliance with the proposed ground and flight training requirements. The FAA restructured proposed § 61.31(l)(7)(ii), however, to clarify what is required of pilots who wish to be excepted from the new EFVS training requirements based on their previous EFVS experience. Accordingly, new § 61.66(h)(4) clarifies that pilots must be able to document that prior to March 13, 2018, they have satisfactorily completed ground and flight training on EFVS operations to 100 feet above the TDZE.[63] The FAA acknowledges the reduction in time from 24 calendar months after the effective date of the final rule to 12 months after the effective date of the final rule. The FAA reduced the cutoff date to 12 months after the effective date of the final rule to coincide with the transition period provided to operators in § 91.175(n). Reducing the duration of time to 12 calendar months should not impact operators as the FAA expects operators to comply with § 91.176(b) and § 61.66 as soon as practicable. Likewise, pilots who have received training in EFVS operations to 100 feet above the TDZE during the transition period will not be required to duplicate that training—as permitted under § 61.66(h)(4).

Furthermore, while proposed § 61.31(l)(7) was intended to provide training centers and pilot schools sufficient time to either revise or develop training programs that complied with the new training requirements; it would not have established a definitive compliance date for such persons. The FAA is therefore adopting § 91.176(b)(4) to clarify that persons conducting EFVS operations to 100 feet above the TDZE must comply with the new requirements in § 91.176(b) and § 61.66 beginning on March 13, 2018. However, the FAA encourages persons to comply with the new requirements in § 91.176(b) and § 61.66 as soon as practicable.

[61] Because persons conducting EFVS operations to 100 feet above the TDZE may comply with § 91.175(l) and (m) prior to March 13, 2018, the appropriate sections of 14 CFR, including §§ 91.175, 91.1039, 121.651, 125.325, 125.381, and 135.225, will reference both §§ 91.175(l) and 91.176. After March 13, 2018, however, § 91.175(l) and (m) will be removed from 14 CFR along with any references to these paragraphs.

[62] Although operators conducting EFVS operations under § 91.175(l) and (m) were not required to receive EFVS training, the majority of them would have received EFVS training prior to conducting EFVS operations. As explained in the NPRM, EFVS manufacturers, aircraft manufacturers, and operators have all recognized the need for pilots to receive training in the use of EFVS prior to conducting EFVS operations. In fact, non-commercial operators generally obtained EFVS training for their pilots at 142 training centers.

[63] Section 61.66(h)(4) does not require the ground and flight training on EFVS operations to have been obtained under an FAA approved training program.

F. Dispatching, Releasing, or Initiating a Flight Using EFVS-Equipped Aircraft When the Reported or Forecast Visibility at the Destination Airport Is Below Authorized Minimums (§§ 121.613, 125.361, 135.219) and Initiating or Continuing an Approach Using EFVS-Equipped Aircraft When the Destination Airport Visibility Is Below Authorized Minimums (§§ 121.651, 125.325, 125.381, 135.225)

The FAA proposed to amend the dispatch, flight release, and takeoff regulations found in §§ 121.613, 125.361, and 135.219 to permit operators authorized to conduct EFVS operations to dispatch, release, or takeoff under IFR when weather reports or forecasts indicate that weather conditions will be below the minimums authorized for the approaches to be flown at the destination airport. The FAA is no longer amending §§ 121.613, 125.361, and 135.219, as proposed, because the amendments are unnecessary as evidenced by a legal interpretation that was issued by the Assistant Chief Counsel for the Regulations Division on April 21, 2009.[64] The legal interpretation explains that authorized minimums are identified in various documents pertaining to the conduct of the flight, such as standard instrument approach procedures and operations specifications. Weather conditions at an airport must be at or above these authorized minimums at an aircraft's estimated time of arrival if the aircraft is to be dispatched or released under part 121 or 125, or a pilot takes off under IFR or begins an IFR over-the-top operation under part 135, to that location. For an EFVS operation, the controlling visibility limitation will be specified in the operator's OpSpec or LOA authorizing the use of EFVS.[65] Because the FAA interprets ''authorized minimums'' in §§ 121.613, 125.361, and 135.219 to include visibility minimums specified in OpSpecs, an operator authorized to conduct EFVS operations is already permitted to dispatch, release, or takeoff when weather reports or forecasts indicate that the weather conditions will be below the minimums authorized in the standard instrument approach procedure to be flown at the destination airport, so long as the weather conditions will be at or above the controlling visibility limitation in the OpSpec authorizing the use of EFVS.[66]

The FAA also proposed to amend §§ 121.615(a) and 125.363(a) to permit operators to dispatch or release an EFVS-equipped aircraft when weather reports or forecasts indicate that the weather conditions will be below the authorized minimums at the destination airport. The FAA is no longer amending §§ 121.615(a) and 125.363(a), as proposed, because the amendments are unnecessary as evidenced by two legal interpretations that were issued by the Assistant Chief Counsel for the Regulations Division on April 12, 2010 and May 31, 2006.[67] The legal interpretations explain that under § 121.615(a), an air carrier may dispatch an extended overwater flight to a destination airport that is forecasted to be below minimums so long as an alternate airport is forecasted to be above minimums. The FAA interprets § 125.363(a) consistently with § 121.615(a) because § 125.363(a) was based on, and contains the same language as, § 121.615(a).[68] It is therefore unnecessary to amend §§ 121.615(a) and 125.363(a) as proposed.

As originally proposed, the FAA is amending §§ 121.651, 125.325, 125.381, and 135.225 to permit operators authorized to conduct EFVS operations to initiate or continue an approach under IFR when weather reports or forecasts, or any combination thereof, indicate the weather conditions at the destination airport are below the authorized minimums for the approach to be flown. The FAA has also decided to amend § 91.1039(e), which was not originally proposed, to clarify that an EFVS operation is permitted when the landing weather minimums are less than those prescribed by the authority having jurisdiction over the airport. The FAA believes these amendments will enable operators to take full advantage of the operational capabilities provided by EFVS to improve access to runways, increase service reliability, and reduce the costs associated with operational delays, without compromising safety.

Boeing commented that when the rule becomes effective and operators obtain the appropriate authorization to conduct EFVS operations, they will be able to fly approaches to landing and rollout in virtually any weather. Boeing questioned whether performance data is currently available that demonstrates there will be a consistent positive outcome across all operators as a result of this new capability. It suggested the FAA obtain experience with one or two operators before adopting the EFVS operations to touchdown and rollout rule for all operators. It believes it is more appropriate to get performance data for a few operators using the new capability, before making it available to everyone.

The FAA disagrees. Operators have been safely conducting EFVS operations to 100 feet above the TDZE for over 12 years. This final rule is expanding these operations to include EFVS operations to touchdown and rollout and to permit operators using EFVS-equipped aircraft to dispatch, release a flight, or takeoff under IFR, and to initiate and continue an approach, when the destination airport weather is below authorized visibility minimums for the runway of intended landing. The FAA is implementing new training, recent flight experience, and proficiency requirements to ensure that pilots are trained and tested to a standard on EFVS operations and to ensure that these pilots maintain the knowledge and skills necessary to safely conduct EFVS operations. Additionally, the FAA intends to provide operating conditions and limitations in an operator's EFVS authorization to ensure the safe conduct of all EFVS operations.

Furthermore, the FAA specifically structured the EFVS regulations to provide flexibility and to enable the FAA to structure an operator's authorization to conduct new EFVS operations in a way that links equipage and system performance to specific operational capabilities. The equipment certification process will ensure the EFVS meets the equipment requirements and certification criteria for the operation for which the EFVS is intended. The operational approval process will validate the operator's ability to safely perform the EFVS operation.[69] The operational approval

[64] Legal Interpretation, Letter to Mr. James B. Hart from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (April 21, 2009); *see also* FAA Information for Operators (Info) 08050 (Sept. 25, 2008).

[65] The FAA recognizes that operators authorized to conduct EFVS operations to 100 feet above the TDZE under § 91.175 do not have visibility limitations specified in their OpSpecs or LOAs authorizing the use of EFVS. The FAA will include visibility limitations in OpSpecs or LOAs authorizing EFVS operations to 100 feet above the TDZE under § 91.176(b).

[66] While § 135.219 uses the term ''authorized IFR landing minimums'' rather than ''authorized minimums,'' the FAA interprets § 135.219 consistently with §§ 121.613 and 125.361.

[67] Legal Interpretation, Letter to Captain Gregory Unterseher from Rebecca MacPherson, Assistant Chief Counsel for Regulations (April 12, 2010); Legal Interpretation, Letter to Captain Mark Anderson from Rebecca MacPherson, Assistant Chief Counsel for Regulations (May 31, 2006).

[68] Proposal to Upgrade Regulation of Certain Large General Aviation Airplanes and Replace Commercial Operator and Air Travel Club Regulations, 44 FR 66324, 66327 (Nov. 19, 1979).

[69] AC 90–106A, Section 10, ''Operational Approval Process for EFVS Operations,'' provides an approval process for operators to demonstrate their ability to perform EFVS operations under § 91.176. The process consists of five distinct, yet

Continued

process also evaluates and monitors EFVS equipment reliability and validates the operator's ability to maintain the EFVS equipment.

Several commenters requested clarification on how the FAA intends to manage an operator's authorization to dispatch, release, or takeoff under IFR, and to initiate and continue an approach, when the destination airport weather is below authorized visibility minimums. Airbus noted that the FAA expects to manage this authorization through an operator's OpSpec, MSpec, or LOA for EFVS operations to ensure that an increase in the rate of missed approaches does not occur. It requested clarification on how the FAA will manage this expectation and what requirements this might place on airborne sensor performance. CMC Electronics, Inc. (CMC) asked the FAA to clarify how it will require OEMs to demonstrate EFVS capabilities to support these authorizations. To illustrate its concerns, CMC noted that RVR reporting does not directly relate to EFVS performance and stated that a given RVR measurement can be a result of different types of weather conditions that look the same in the visible spectrum but may lead to different performance in currently certified EFVS systems. Rockwell Collins commented that it assumes visibility limitations will appear in an operator's OpSpec, MSpec, or LOA for EFVS operations as the limitations do not appear in rule language. Rockwell Collins also asked whether it is possible to have a higher than RVR 1000 feet visibility limitation based on a lesser performing sensor, or whether there is the potential for a sensor to be given multiple approvals based on performance in different environmental conditions. Thales commented that the FAA should clearly define minimums for these operations based on EFVS sensor technology, system performance, and installation criteria to ensure equality of treatment for all applicants.

The response to these comments is that an applicant who seeks to certify an EFVS will demonstrate EFVS performance for its aircraft during the EFVS equipment certification process.[70] During that process, the FAA will determine whether an EFVS meets the equipment requirements and certification criteria for the EFVS operation it is intended to be used for (*i.e.,* an EFVS operation to 100 feet or an EFVS operation to touchdown and rollout). EFVS equipment certification criteria differ depending on the EFVS operation to be conducted. Initially the FAA plans to authorize EFVS operations to touchdown and rollout to visibilities as low as RVR 1000 feet. The FAA expects to develop touchdown and rollout authorizations in the future to lower visibilities as EFVS equipment is developed to support those operations.

In addition to the EFVS equipment certification process, the operational approval process—which verifies an operator's ability to safely perform the EFVS operation—includes a demonstration and inspection phase. During this phase, the FAA evaluates an operator's processes, procedures, and training as well as the ability of the operator's maintenance personnel and dispatchers, or persons authorized to exercise operational control, to support the EFVS operations to be conducted. This process verifies the operator's ability to conduct EFVS operations and to determine when it is appropriate to dispatch a flight, release a flight, or take off under IFR as well as initiate or continue an approach when the weather at the destination airport is below authorized minimums. In accordance with § 91.176(a)(4), the FAA may prescribe additional equipment, operational, and visibility and visual reference requirements to account for specific equipment characteristics, operational procedures, or approach characteristics through an operator's authorization to conduct EFVS operations. Accordingly, the FAA may specify minimum visibilities in OpSpecs for part 121, 125, or 135 operators to initiate and continue an approach using an EFVS-equipped aircraft when the destination airport weather is below authorized visibility minimums for the approach to be flown. Therefore, as Rockwell Collins assumed, visibility limitations will appear in an operator's OpSpec, MSpec, or LOA for EFVS operations. In response to Rockwell Collins' inquiry, it is possible to have a higher than RVR 1000-feet-visibility limitation depending on the capability of the EFVS equipment and on the EFVS operation the equipment is certified to support. Authorizations for future EFVS operations may specify other requirements under § 91.176(a)(4), depending on the EFVS operation to be conducted and the ability of the EFVS equipment to support a given EFVS operation.

The FAA disagrees with Thales that it should mandate specific minimums by regulation for EFVS operations as this would be contrary to the FAA's intent. The FAA acknowledges that EFVS performance using currently certified EFVS equipment can vary by sensor technology and design, meteorological conditions, and other factors; however, the FAA may make adjustments to an operator's EFVS authorization. Managing an authorization in this manner ensures that the FAA is able to maintain an appropriate level of safety, enables the FAA to effectively respond to new technology developments, and provides a means to tailor an authorization to fit an operator's particular EFVS capabilities. Therefore, although giving a sensor multiple approvals based on performance in different environmental conditions, as Rockwell Collins suggested, is impractical, the FAA may adjust an operator's EFVS authorization in response to certain conditions. For example, operational experience may indicate that adjustments may have to be made in response to certain meteorological conditions. Operators who plan to conduct these operations should establish operating procedures and training that account for the limitations of the EFVS and weather conditions that may exceed the sensor's ability to provide the enhanced flight visibility required to complete the approach and landing.

Eurocopter/American Eurocopter commented that the provisions of § 121.651(d) that permit a pilot to begin the final approach segment of an instrument approach procedure other than a Category II or Category III procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure should not be limited to airports that are served by an operative ILS and an operative PAR. Eurocopter asserted that LPV approaches are becoming commonplace and are the only approaches with vertical guidance available at many airfields. The commenter recommended that § 121.651(d) permit the use of WAAS/LPV, particularly with respect to EFVS operations.

The FAA is not adopting Eurocopter/American Eurocopter's recommendations because they are

related phases. The demonstration and inspection phase of the process is the major validation phase where the FAA observes and evaluates the operator's demonstration of its ability to perform in accordance with the procedures, guidelines, and parameters described in the operator's formal proposal. This phase concludes when the operator provides sufficient proof to satisfy the FAA's requirements. The demonstration and inspection phase permits new EFVS capabilities to be deployed while providing regulatory oversight and verification of system and crew performance.

[70] Part 21 contains the certification procedures for products and parts. Parts 23, 25, 27 and 29 contain the airworthiness standards for EFVS. AC 20–167A and AC 90–106A contain guidance on EFVS sensor performance and airworthiness certification appropriate to the EFVS operation to be conducted.

outside the scope of this rulemaking. The FAA did not propose to change the current requirements of § 121.651(d) with respect to non-EFVS operations. The FAA notes, however, that § 121.651(e) permits a pilot to begin the final approach segment of an Area Navigation (RNAV) (GPS) approach to the published LPV (or other applicable) minimums when the visibility is reported to be below the visibility prescribed by the instrument approach procedure when using EFVS as specified in that paragraph.

Gulfstream Aerospace Corporation commented that the FAA did not limit the use of EFVS for landing to ''certain operators.'' However, the commenter noted that the NPRM would have permitted ''certain operators'' using EFVS-equipped aircraft to dispatch, release, or takeoff under IFR, and to initiate and continue an approach, when the destination airport weather was below authorized visibility minimums for the runway of intended landing. Gulfstream commented that the FAA's use of the term ''certain operators'' makes it appear as if dispatch and takeoff using EFVS is restricted. It further stated that if this restriction applies to some operators and not others, the rationale for the distinction should be provided.

The term ''certain operators'' means persons conducting EFVS operations under part 121, 125, or 135 whose operations are subject to specific rules governing the dispatch, release, or takeoff of aircraft under IFR. Prior to this final rule, regulations prohibited these operators from dispatching, releasing, or initiating a flight under IFR when the reported or forecast visibility at the destination airport was below authorized minimums. Regulations also prohibited these operators from initiating or continuing an approach when the destination airport visibility was below authorized minimums. The FAA did not intend the term ''certain operators'' to imply that additional restrictions would be imposed upon individual operators.

Dassault Aviation noted references made by the FAA to the European Aviation Safety Agency's (EASA) reduction of ⅓ of the visibility required to conduct an approach using EFVS in EASA member states. Dassault Aviation requested that the FAA articulate its position with respect to this means of calculating visibility minimums for EFVS operations. The FAA acknowledges that EASA uses a different method to permit operators to conduct EFVS operations. However, this rulemaking only addresses EFVS operations that are subject to FAA regulations.

Rockwell Collins asked whether the FAA and EASA will attempt to harmonize EFVS approved capabilities and requirements in the future. In its comment, Rockwell Collins referred to differences between FAA and EASA regulations such as the requirements applicable to beginning an approach when the reported visibility is less than the visibility specified in the instrument approach procedure to be flown.

The FAA participates on several international committees that are tasked with addressing advanced vision system operations. Every attempt is made to harmonize those operations; however, differences in underlying operational concepts and existing regulations may preclude full harmonization of EFVS rules.

G. Revisions to Category II and III General Operating Rules To Permit the Use of an EFVS (§ 91.189)

Section 91.189 contains the general operating rules for Category II and Category III operations.[71] As originally proposed, § 91.189(d) now permits a pilot to use an EFVS in lieu of natural vision to identify the visual references required for descent below the authorized DH on a Category II or III approach. A pilot conducting a Category II or III approach in accordance with § 91.189(d) must comply with either the provisions of that paragraph for identifying required visual references using natural vision or with the provisions of § 91.176 for identifying required visual references using EFVS.[72] Also as originally proposed, § 91.189(e) now permits a pilot operating an aircraft in a Category II or III approach to continue the approach below the authorized DA/DH provided the conditions specified in § 91.176 are met.[73]

Thales commented that the revisions to § 91.189(d) are confusing when considering how an EFVS might be used during Category III operations. It stated that the amendments are applicable to Category II operations because the DH is at 100 feet, but for Category III operations where the DH is less than 100 feet, Thales believes that the rule should address this segment of the approach.

The FAA disagrees that the regulation should specifically address the use of EFVS during Category III approaches. Rather, the FAA is revising the applicable portions of § 91.189 to align it with § 91.176, which facilitates the possible future use of authorized EFVS operations during authorized Category II or Category III operations. In § 91.189(d), the FAA is amending the regulations for part 91 operators (except for part 91, subpart K operators) to permit them to use an EFVS in lieu of natural vision to identify the required visual references. Under this rule, § 91.189(e) now permits a pilot operating an aircraft on a Category II or III approach to continue the approach below the authorized DA/DH provided the conditions specified in § 91.176 are met. The FAA notes that it authorizes Category II or Category III operations through an operator's OpSpec, MSpec, or LOA. Therefore, an operator who wishes to conduct an EFVS operation during an authorized Category II or Category III operation may only do so in accordance with an OpSpec, MSpec, or LOA. The FAA is also adding paragraphs (a)(2)(xi) and (b)(2)(x) to § 91.176 to clarify the requirement for an authorization to conduct an EFVS operation during an authorized Category II or Category III operation. The FAA notes that it will develop authorizations and guidance to support future EFVS operations.

H. Pilot Compartment View Rules and Airworthiness Standards for Vision Systems With Transparent Displays Located in the Pilot's Outside Field of View (§§ 23.773, 25.773, 27.773, and 29.773)

Sections 23.773, 25.773, 27.773, and 29.773 specify the requirements and conditions under which the pilot compartment must provide an extensive, clear, and undistorted view to the pilot for safe operation of the aircraft within its operating limitations.

[71] Section 91.189(g) states that the provisions of § 91.189 do not apply to Category II or Category III operations conducted by certificate holders operating under parts 121, 125, 129, or 135, or holders of MSpecs issued in accordance with part 91, subpart K. Therefore, § 91.189 only pertains to part 91 operators other than those conducting operations under part 91, subpart K.

[72] Prior to this final rule, a pilot operating an aircraft on a Category II or Category III approach that requires the use of a DA/DH could not continue the approach below the authorized DH unless he or she had at least one of the visual references listed in § 91.189(d)(2) distinctly visible and identifiable using natural vision.

[73] The FAA notes that all of the equipment requirements and airmen certification requirements for the conduct of Category II and Category III operations will continue to apply when an EFVS is used during the conduct of those operations. The FAA also notes that an operator intending to use an EFVS to descend below DA/DH during the conduct of an authorized Category II or Category III operation will be required to revise its Category II or Category Ill manual specified in § 91.191 to reflect the use of EFVS. A person seeking to conduct authorized Category II or Category III operations where the use of EFVS is necessary to conduct those operations will have to be authorized by the Administrator.

Additionally, the regulations require that the pilot compartment be free of glare and reflection that could interfere with the normal duties of the minimum flightcrew.

When these rules were originally issued, the FAA did not anticipate the development of vision systems with transparent displays that could significantly enhance, or even substitute for, a pilot's natural vision. Vision systems are used to display an image of the external scene to the flightcrew. For over a decade, the FAA has certified vision systems for transport category aircraft that have head up displays. However, prior to this final rule, the airworthiness standards governing the pilot compartment view set forth in § 25.773 were inadequate to address the novel or unusual design features of these systems. Therefore, the FAA issued special conditions under § 21.16 to provide airworthiness standards, which were used to enable the installation of vision systems that met a level of safety equivalent to that established by the regulations. Special conditions were issued to each applicant, because special conditions only apply to individual certification projects. However, for consistency, the FAA attempted to standardize these special conditions to the maximum extent possible. With over fourteen years of experience, the process of developing special conditions for vision systems has become routine, and operational experience has shown that the certification requirements set forth in the special conditions have resulted in safe and effective vision system operations.

Based on the experience gained by the FAA in developing special conditions, the FAA is establishing airworthiness standards for vision systems with transparent displays located in the pilot's outside view for airplanes and rotorcraft. This will provide industry with known requirements for the certification of these systems and eliminate the costs resulting from the process of issuing special conditions. Accordingly, the FAA is amending §§ 23.773, 25.773, 27.773, and 29.773 to include the general requirements that were previously contained in special conditions. In recognition of the rapid development of vision system technology, these amendments permit the certification of a wide range of current and future vision systems, such as an EVS, EFVS, SVS, or CVS, and they address display methods other than a HUD, such as head mounted displays or other types of head up presentations.

1. Vision Systems and Display Methods Addressed by §§ 23.773, 25.773, 27.773, and 29.773

Under §§ 23.773(c)(2), 25.773(e)(2), 27.773(c)(2), and 29.773(c)(2), when the vision system displays imagery and any symbology referenced to the imagery and outside scene topography, including attitude symbology, FPV, and FPARC, that imagery and symbology must be aligned with, and scaled to, the external scene. This requirement marks a slight change from the NPRM where the proposed rule would have required the vision system to continuously display the imagery, attitude symbology, FPV, FPARC, and other cues, which are referenced to the imagery and external scene topography.

Thales commented that the proposed airworthiness standards would have required the FPARC to be permanently displayed along with the EFVS imagery. Thales stated that there are phases of flight where this symbology may not be necessary. It suggested the FAA require, ''flight path angle reference cue when necessary.'' Airbus submitted a similar comment, stating that § 25.773(e)(2) should provide for presenting a reduced set of aircraft flight information and flight symbology on the HUD or other equivalent display. It stated that the declutter mode should be allowed to preserve, or not interfere with, the EFVS image and outside view. Airbus's comment also applied to § 23.773(c)(2) and could have necessitated revisions to § 91.175(m) as well. Airbus proposed that § 25.773(e)(2) should permit the display of some cues to be removed depending on the flown phase.

The FAA agrees that the airworthiness standards should not require the continuous display of specific symbology, including the FPARC, in all phases of flight. The FAA's intent was not to require the display of any EFVS symbology or imagery in the airworthiness rules as these rules also address transparent display surfaces for systems other than EFVS. Instead, the FAA intended to identify those visually displayed elements, such as imagery and earth-referenced symbology, which need to be conformal—that is, scaled to and aligned with the outside view. Accordingly, the regulations do not require the continuous display of specific symbology.

However, the FAA does not agree that it should revise the operating requirements in § 91.175(m), which have been moved to § 91.176. The operating rules require specific information to be displayed to the pilot. The FAA notes, however, that EFVS typically have declutter modes available to the pilot that provide a reduced set of information when it is necessary for the safe conduct of the flight.

Eurocopter and American Eurocopter commented that the airworthiness certification rules should be more specific about which types of vision systems they address. It stated that the regulations were specific to EFVS and not to other vision systems that might be certified under these regulations. The FAA agrees with the commenter that the rule language, as proposed, would have required the continuous display of symbology and imagery that was applicable only to EFVS and not to other vision systems that might be certified under these regulations. The airworthiness requirements of §§ 23.773, 25.773, 27.773, and 29.773 apply to any vision system such as an EFVS, EVS, SVS, or CVS that uses a transparent display surface, such as a head up display, head mounted display, or other equivalent display, that is located in the pilot's outside field of view. Accordingly, the FAA is not requiring the continuous display of EFVS symbology and imagery in the airworthiness standards applicable to pilot compartment view. Sections 91.176(a)(1)(i) and (b)(1)(i), however, include specific equipment requirements that address the presentation of sensor imagery, aircraft flight information, and flight symbology for the conduct of EFVS operations.

Honeywell commented that the FAA should apply the airworthiness standards to all vision systems. It believes that applying the standards to all vision systems would potentially ease certification delays and provide a clear path to certification for proven technology that meets specified performance requirements. The FAA agrees and notes that the airworthiness standards in §§ 23.773, 25.773, 27.773, and 29.773 already address all vision systems with a transparent display surface located in the pilot's outside field of view, such as a head up display, head mounted display, or other equivalent display. The FAA also notes that AC 20–167A provides the means of compliance for certifying a vision system with a transparent display surface located in the pilot's outside field of view.

Airbus asked if the FAA would revise the pilot compartment view requirements to apply to HDD vision systems. GAMA commented that the NPRM references ''vision systems'' in several locations, which seem to describe HUD-based systems. GAMA was concerned that the use of the term ''vision systems'' may negatively impact stand-alone head down systems, such as

Synthetic Vision Systems, common in many general aviation aircraft. GAMA recommended that the FAA review its use of the term ''vision system'' and replace it with the term ''Enhanced Flight Vision System,'' as defined in § 1.1.

The FAA disagrees with GAMA. The FAA used the term ''vision system'' to include any EVS, EFVS, SVS, or CVS that uses a transparent display surface located in the pilot's outside field of view, such as a head up-display, head mounted display, or other equivalent display. The certification regulations in this rule do not apply to other vision systems that have only a head down display. Accordingly, the FAA is not revising these requirements to include HDDs.

Cessna Aircraft Company commented that the proposed certification rules pertaining to vision systems were too general and did not include all of the requirements of the operating rules. It suggested aligning the requirements of §§ 23.773(c), 25.773(e), 27.773(c) and 29.773(c) with the operating rules in terms of features and functions that are required to meet the rule, or invoke them by reference.

The FAA disagrees with the commenter. Sections 23.773(c), 25.773(e), 27.773(c), and 29.773(c) contain airworthiness requirements related to providing a safe pilot compartment view, not requirements that are specific to meeting operating rules. The airworthiness standards in these sections apply to all vision systems with transparent display surfaces located in the pilot's outside field of view. Not all of these vision systems may be used for EFVS operations. The FAA is therefore including specific equipment requirements in § 91.176 for EFVS operations. AC 20–167A contains a means of compliance for EFVS, EVS, SVS, and CVS and provides guidance material on features and functions required by the rule.

2. Pilot's Outside View—Terminology and Compensation for Interference

Sections 23.773(c)(1), 25.773(e)(1), 27.773(c)(1), and 29.773(c)(1) require the vision system display to compensate for interference with the pilot's outside field of view such that the combination of what is visible in the display and what remains visible through and around it enables the pilot using the vision system to perform the actions necessary for the operation of the aircraft as safely and effectively as he or she would without a vision system. The terminology in these requirements differs slightly from the NPRM, which used the term ''pilot's outside view,'' rather than ''field of view.''

Gulfstream Aerospace Corporation commented that the term ''pilot's outside view'' was unclear. The FAA agrees and is adopting the term ''pilot's outside field of view'' to refer to what is visible to the pilot from the pilot compartment through the windows of the flight deck looking out, primarily forward of the aircraft, but not limited to the forward field of view.

Elbit Systems of America commented that the FAA should either revise or not adopt the requirement of §§ 23.773(c)(1), 25.773(e)(1), 27.773(c)(1), and 29.773(c)(1), specifying that a vision system must compensate for interference with the pilot's outside view because it believes the requirement is ambiguous and requires clarification. The FAA disagrees and is adopting the requirement that the vision system display must compensate for the visual interference it may cause. It may compensate by providing visual content on the display and by providing EFVS controls that allow the pilot to use sensor imagery safely in a variety of lighting conditions. While it is in operation, the vision system must compensate for interference such that the combination of what is visible in the display and what remains visible through and around it enables the pilot to perform those maneuvers and procedures necessary for the safe operation of the aircraft. The rule provides the performance requirements for the system. AC 20–167A clarifies how EFVS may comply with this requirement.

3. Undistorted View Requirements

Sections 23.773(c)(2), 25.773(e)(2), 27.773(c)(2), and 29.773(c)(2) state that the pilot's view of the external scene may not be distorted by the transparent display surface or the vision system imagery. This differs slightly from what the FAA proposed based on concerns raised by commenters.

Boeing commented that the term ''undistorted'' in proposed § 25.773(e)(2) was not defined in the NPRM. Boeing asserted the term ''undistorted'' was subjective and that an applicant needs quantitative standards for certification to ensure the interpretation of the term is consistent and to ensure the applicant knows how to comply with the requirement. Boeing noted that the FAA could address this term in AC 20–167, SAE ARP–5288, or some other airworthiness standards document but asserted that a clear definition and means of compliance was necessary.

Crew Systems commented that the requirement for the display to provide an ''undistorted view of the external scene'' was excessive as it is not possible to have a see-through panel with no distortion, and suggested that the FAA require that the level of distortion could not interfere with the pilot's ability to control the aircraft trajectory with reference to the scene presented.

Elbit Systems of America stated that ''an undistorted view of the external scene'' should be consistent with other regulatory guidance. Elbit Systems contended that all optical systems have some allowable optical distortion levels and that it is not possible to produce a vision system that provides an undistorted view. Elbit pointed out that AC 20–167A allows for optical distortion, and referred to Section 4.5(c)(4)(h)(iv), which states optical distortion should be 5 percent or less across the minimal field of regard and no greater than 8 percent outside the minimal field of regard. Elbit believes the FAA should allow for some inherent optical distortion.

Based on these comments, the FAA is revising the first sentence of §§ 23.773(c)(2), 25.773(e)(2), 27.773(c)(2), and 29.773(c)(2) to require that, ''The pilot's view of the external scene may not be distorted by the transparent display surface or by the vision system imagery.'' The FAA believes that this clarifies the intent of the rule. While any see-through display may have some distortion, similar to the window panels in the flight deck of the aircraft, such distortion must be practically imperceptible to the pilot's eyes and create no adverse misleading effects on the pilot's view. The level of distortion should not interfere with or adversely affect the pilot's visual task performance. This requirement is an extension of the requirement in § 25.773(a)(1) that the pilot's view be sufficiently undistorted. AC 20–167A sets forth an acceptable means of complying with requirements applicable to optical distortion, along with AC 25–11B, appendix F.

4. Alignment of Vision System Cues and Head Mounted Display (HMD) Considerations

Sections 23.773(c)(2), 25.773(e)(2), 27.773(c)(2), and 29.773(c)(2) require that, when the vision system displays imagery and any symbology referenced to the imagery and outside scene topography, they must be aligned with, and scaled to, the external scene.

Crew Systems commented that a vision system with a transparent display surface requires alignment of the vision system cues with the external scene. It also stated that these operations require

a high degree of reliability and integrity, and that the proposal should include some mention of the effect of misalignment of the image with reference to the real world. In particular, the use of head mounted displays will require a precise alignment which in turn will place demands on the head tracker system. The commenter thought the rules should discuss equipment, systems, and installation requirements (§§ 23.1309, 25.1309, 27.1309, and 29.1309) as they apply to head tracker systems. The commenter also contended that a head tracker system should be fail operational,[74] which would impose more stringent requirements than have been required to date.

The FAA agrees with the safety intent of the comment. Image alignment should not interfere with or adversely affect the pilot's visual task performance. While all optical systems have some allowable optical distortion levels, the level of distortion cannot interfere with the pilot's ability to control the aircraft trajectory with reference to the real world. For further discussion on distortion, see the FAA's disposition of comments above in section III.H.3 of the preamble.

With respect to Crew Systems comments on head tracker systems, the FAA has not yet developed detailed criteria for head worn displays (HWD), of which the head tracker is a component. As head wearable display technology improves, AC 20–167A, and any subsequent revision, may contain the means of compliance. The FAA has tasked the Society of Automotive Engineers (SAE) with developing an aerospace standard for head wearable display performance criteria, which the FAA will consider including in the advisory circular guidance criteria. Therefore, any equipment, system, and installation criteria for a fail operational head tracker system would be included in airworthiness and operational guidance and not primarily in the pilot compartment view regulations.

The Helicopter Association International commented that the rule should address head mounted display (HMD) head tracker integrity to avoid potential misleading display of imagery or symbology resulting from head tracker misalignment.

The FAA does not agree to explicitly address HMD head tracker integrity in the rule. The performance based airworthiness standards of §§ 23.773, 25.773, 27.773, and 29.773 already address the commenter's concerns. While no HMD installation has been approved by the FAA, nor a complete set of airworthiness criteria established, the FAA does expect to develop appropriate means of compliance with applicable regulatory requirements in the future. As head-mounted or head-worn displays are developed for use in vision system operations, the FAA will develop specific guidance to assist in compliance.

ALPA commented that the rule requires an EFVS to provide an undistorted view of the external scene, yet notes ALPA pilots who have flown with EFVS report some EFVS images have parallax when viewed from off-center. Assuming parallax is considered a distortion, ALPA recommended that the FAA establish and quantify a tolerance level regarding the acceptability of parallax in EFVS landing operations.

The regulations state that the pilot's view of the external scene may not be distorted by the transparent display surface or by the vision system imagery. Guidance relating to display criteria, including parallax, is contained in AC 20–167A. As set forth in that AC, ''Parallax should not result in significant performance differences in safety-related performance parameters (*e.g.,* flare height, sink rate, touchdown location, groundspeed during landing, exit and taxi) between EFVS operations and visual operations in the same aircraft.'' AC 20–167A, Section 4–5 contains additional guidance applicable to EFVS displays.

5. Requirement To Provide a Means of Immediate Deactivation and Reactivation of Vision System Imagery

As originally proposed, §§ 23.773(c)(3), 25.773(e)(3), 27.773(c)(3), and 29.773(c)(3) require that the vision system provide a means to allow the pilot using the display to immediately deactivate and reactivate the vision system imagery, on demand, without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust controls, and for rotorcraft, without removing the pilot's hands from the primary flight and power controls, such as cyclic and collective, or their equivalent.

FedEx Express, Gulfstream, and Elbit Systems of America recommended against including this requirement in §§ 23.773(c)(3), 25.773(e)(3), 27.773(c)(3), and 29.773(c)(3). They asserted that these regulations pertain to pilot compartment view and that it is not necessary to include these details when they are also addressed in AC 20–167.

The FAA disagrees. The control requirement of §§ 23.773(c)(3), 25.773(e)(3), 27.773(c)(3), and 29.773(c)(3) protects the pilot's view of the outside scene. If the sensor imagery were to obscure the pilot's view of the outside scene, the pilot should have a readily available means to immediately remove the sensor imagery from the HUD. Accordingly, the FAA is requiring immediate deactivation and reactivation.

Eurocopter, American Eurocopter, and GAMA commented that it is not clear whether the requirement applies to the imagery, the piloting symbology, or both. They stated that the ability to deactivate and reactivate the vision system imagery and the piloting symbology may be affected by the type of technology on which the vision system is based. As an example, they pointed out that if night vision goggles (NVGs) were used as an EVS, pilots would have to remove their hands from the flight controls to raise the goggles out of their field-of-view. They recommended that the FAA clarify in the regulations that only the imagery must be deactivated and reactivated on demand.

The FAA does not agree with the recommendation. The commenters' concerns have already been addressed because the regulations specify that the pilot must be able to immediately deactivate and reactivate only the vision system imagery on demand. The FAA notes that applicants should also comply with guidance applicable to HUD installations. In addition, NVGs are not transparent displays and are not addressed by §§ 23.773, 25.773, 27.773 and 29.773. NVGs do not meet the definition of an EFVS. Specifically, NVGs are not transparent when turned off, do not provide the required aircraft flight information and flight symbology, and are not certified to be used in lieu of natural vision to descend below DA/DH or MDA during EFVS operations under IFR. NVGs are aids to natural vision in VMC, not IMC.

Airbus commented that the certification requirement to provide the pilot with a means to immediately deactivate and reactivate the vision system imagery on demand without removing the pilot's hands from the primary flight and power controls is not relevant to all operations where an EFVS might be used. It suggested that this airworthiness certification requirement should not apply when a pilot uses an EFVS for situation awareness only, *i.e.,* when not used to conduct operations under § 91.176(a) or (b).

[74] A fail operational system is a system capable of completing the specified phases of an operation following the failure of any single system component after passing a point designated by the applicable safety analysis (*e.g.,* Alert Height).

The FAA disagrees with the commenter's proposed exception. Providing the pilot a means to immediately deactivate and reactivate the vision system imagery on demand without removing the pilot's hands from the primary flight and power controls is a minimum requirement regardless of whether the EFVS is being used for situation awareness or to conduct an EFVS operation. Because there are times when a pilot may need to quickly remove or restore the sensor imagery during a critical phase of flight, it is essential for the pilot to be able to quickly remove or restore the vision system imagery on demand without removing his or her hands from the primary flight and power controls. This requirement, therefore, protects the pilot's view of the outside scene and applies to all vision systems with a transparent display surface located in the pilot's outside field of view.

6. Vision Systems and Requirements Applicable to Duties and Maneuvers

Sections 25.773(e) and 29.773(c) state that a vision system with a transparent display surface located in the pilot's outside field of view, such as a head-up display, head-mounted display, or other equivalent display, must meet the requirements specified in paragraphs (e)(1) through (e)(4) and paragraphs (c)(1) through (c)(4), respectively, in nonprecipitation and precipitation conditions. These requirements differ slightly from the NPRM based on a comment from Sierra Nevada Corporation.

Sierra Nevada Corporation commented that §§ 25.773(e)(1) and (e)(4) and §§ 29.773(c)(1) and (c)(4) apply to the duties and maneuvers of §§ 25.773(a) and 29.773(a), which are limited to nonprecipitation conditions. Sierra Nevada Corporation thought it reasonable that the requirements would also apply during precipitation conditions. Sierra Nevada Corporation proposed that the requirements apply in any precipitation and lighting conditions — day or night—in which the EFVS is to be certified.

The FAA agrees that the requirements should apply in both precipitation and nonprecipitation conditions. Accordingly, the FAA is revising the introductory language in §§ 25.773(e) and 29.773(c) to address both precipitation and nonprecipitation conditions. Lighting, however, is addressed in other airworthiness standards.

7. Issue Papers for HUD, EFVS, EVS, SVS and CVS Installations

Rockwell Collins commented that FAA vision system issue papers [75] have identified unique EFVS issues related to system operation and safety, and inquired whether these issue papers will also be eliminated based on the new airworthiness requirements for vision systems in the rule and associated advisory circulars.

The FAA used HUD issue papers for general means of compliance with part 25 and for special conditions related to pilot compartment view. The HUD installation means of compliance issue papers are no longer necessary now that AC 25–11, Revision B was published in October 2014. AC 20–167A is used as the primary means of compliance for installations of EFVS, EVS, SVS and CVS. The special conditions for display of vision system video on the HUD will no longer be necessary after this final rule becomes effective. However, an issue paper for dual-HUD installations may still be used to address means of compliance with occupant safety regulations, such as §§ 25.562 and 25.785, until a new policy statement is published to address this topic.

8. Head Up Display (HUD) Installation and Bird Strike Requirements

Crew Systems commented that the FAA should explicitly require a fixed head up display combiner to meet the bird strike requirements of § 25.775.

The FAA disagrees. Section 25.775 addresses design and construction requirements for windshields and windows. These requirements provide an appropriate level of safety against the hazard of a bird strike, and additional requirements applicable to HUD installation would not provide any additional safety benefit.

I. Related and Conforming Amendments (§§ 91.175, 91.905, and 135.225)

The FAA did not receive any comments on the related and conforming amendments it proposed in the NPRM. The FAA is therefore adopting the related amendments as originally proposed. However, because operators may continue to comply with § 91.175(l) prior to March 13, 2018, the FAA is not adopting the conforming amendments it originally proposed to § 91.175. Instead, the FAA is amending § 91.175 to include references to both § 91.175(l) and § 91.176 until March 13, 2018. The revisions to § 91.175 are discussed in more detail below.

In § 91.175(c)(3)(vi), the FAA is revising the term ''visual approach slope indicator'' to read ''the visual glideslope indicator,'' because the term ''visual approach slope indicator'' is overly restrictive.

In § 91.176(b), which contains the regulations that were moved from § 91.175(l), the FAA is revising ''DH or MDA'' to read ''DA/DH or MDA'' to correct an inadvertent omission that occurred in a previous rulemaking.[76]

The FAA is revising § 91.905 to include § 91.176 as a rule subject to waiver. Section 91.175 was listed as one of the rules in § 91.905 that was subject to waiver, and the provisions applicable to EFVS operations to 100 feet above the TDZE were moved from § 91.175(l) and (m) to § 91.176. Section 91.176 also contains regulatory provisions applicable to EFVS operations to touchdown and rollout. As the FAA has already permitted EFVS operations to 100 feet above the TDZE to be subject to waiver, the FAA is permitting the regulations applicable to EFVS operations to touchdown and rollout also to be subject to waiver.

The FAA is revising the introductory text of § 91.175(c) to refer to both paragraph (l) of § 91.175 and § 91.176 because a person conducting an EFVS operation to 100 feet above the TDZE may comply with either the requirements specified in § 91.175(l) or § 91.176(b) prior to March 13, 2018.[77]

Additionally, § 91.175(d)(1), which references § 91.175(l), will remain in the 14 CFR until March 13, 2018. The FAA is re-designating § 91.175(d)(2) as (d)(3) and is adding a new paragraph (d)(2).[78] New paragraph (d)(2) references § 91.176 and refers to paragraphs (a)(3)(iii) and (b)(3)(iii) of § 91.176, which contain the visual references required for descent below 100 feet above the TDZE for EFVS operations to touchdown and rollout and EFVS

[75] The FAA uses issue papers to provide a structured means to address certain issues in the type certification and type validation processes. ''Issue Paper Process,'' AC No. 20–166A (Nov. 6, 2014).

[76] In a previous rulemaking, ''Area Navigation (RNAV) and Miscellaneous Amendments,'' 72 FR 31678 (Jun. 7, 2007), the FAA changed most of the references to ''DH or MDA'' in § 91.175 to ''DA/DH or MDA.'' However, it did not, as intended, change the references to ''DH or MDA'' in § 91.175(l).

[77] The requirements of paragraph (l) of § 91.175 will expire on March 13, 2018. Beginning on March 13, 2018, a person conducting an EFVS operation to 100 feet above the TDZE must comply with the requirements of § 91.176. Therefore, effective March 13, 2018, the introductory text of § 91.175(c) will be revised to reference only § 91.176.

[78] The requirements in paragraph (d)(2) were originally proposed as revisions to current paragraph (d)(1).

operations to 100 feet above the TDZE, respectively.[79]

The FAA is also revising paragraph (e)(1) of § 91.175 so that it references both paragraph (l) of that section and § 91.176.[80]

Furthermore, as discussed in section III.E.5.d of this preamble, the FAA is adding paragraph (n) to § 91.175 to provide a transition period for operators conducting EFVS operations to 100 feet above the TDZE.[81]

The FAA is also revising § 135.225, which prescribes IFR takeoff, approach, and landing minimums, to correct a drafting error that occurred when the 2004 EFVS final rule was adopted. This revision was not proposed in the NPRM. The 2004 EFVS final rule, which made revisions to § 135.225, did not account for changes made to that section by ''Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations'' (Ownership and On-Demand), a final rule published in September 2003. 68 FR 54520. In Ownership and On-Demand, the FAA established the concept of ''eligible on-demand operations'' in part 135. This rule amended § 135.225 to allow eligible on-demand operations to conduct instrument approach procedures to airports without weather reporting facilities. Structurally, this exception was added as paragraph (b), existing paragraph (b) became paragraph (c), and (c) became (d). Because the paragraphs shifted down a letter, the cross reference in new § 135.225(d) was changed from (b) to (c). In January 2004, the FAA again amended § 135.225 when the agency published the EFVS final rule. The FAA intended in that rule to clarify the language pertaining to weather minimums on the final approach segment—that is, the rule text that was shifted from paragraph (c) to paragraph (d) by the September 2003 rule. However, the agency did not revise the final EFVS rule document to reflect that the paragraph designation had changed as a result of the September 2003 rule. The EFVS rule replaced paragraph (c) instead of the intended paragraph (d) creating two paragraphs in the section on weather minimums during the final approach segment and deleting the paragraph establishing what the weather must be to begin the final approach segment of an instrument approach. An FAA legal interpretation dated September 20, 2013, concluded that the current rule language was a result of a drafting error that arose because two final rules were proceeding close in time and the second rule did not account for changes made to § 135.225 by the first rule.[82] The agency did not intend for paragraphs (c) and (d) to apply to instrument approaches initiated using the exception given to eligible on-demand operations in paragraph (b). Accordingly, the FAA is now deleting paragraph (d), revising and re-designating current paragraph (c) as paragraph (d), and adding new paragraph (c).

J. Implementation

As originally proposed, for initial implementation, the FAA is authorizing EFVS operations to touchdown and rollout in visibilities as low as RVR 1,000 feet.[83] Several commenters raised concerns about the FAA's proposed implementation.

FedEx Express (FedEx), Gulfstream, GAMA, Elbit Systems of America, Honeywell, Sierra Nevada Corporation, and RTCA commented that the FAA's statement in the NPRM about the status of RTCA DO–341, ''Minimum Aviation System Performance Standards (MASPS) for an Enhanced Flight Vision System to Enable All-Weather Approach, Landing, and Rollout to a Safe Taxi Speed,'' needs to be updated. They pointed out that DO–341, which contains MASPS for an EFVS that would support EFVS operations to touchdown and rollout in visibilities down to RVR 300 feet, was completed and published on September 26, 2012.

The FAA acknowledges that RTCA DO–341 was published on September 26, 2012, and that it contains industry recommendations for an EFVS that would support EFVS operations to touchdown and rollout in visibilities down to RVR 300 feet.

FedEx, Gulfstream, GAMA, Elbit Systems of America, and Honeywell expressed concern over the FAA's proposal to limit initial implementation of EFVS operations to touchdown and rollout to visibilities of no lower than RVR 1,000 feet. They requested that the FAA clarify that the RVR 1,000 feet visibility limitation is a starting point for EFVS operations to touchdown, but that authorizations to conduct EFVS operations in visibilities of less than RVR 1,000 feet will be developed when EFVS equipment is developed and certified that supports operations in lower visibility conditions. These commenters and Dassault Aviation expressed concern over whether, or when, AC 20–167A would be revised to incorporate the RTCA DO–341 criteria, which contains MASPS for an EFVS that would support EFVS operations to touchdown and rollout in visibilities down to RVR 300 feet. The commenters also stated that if there were no plans to adopt these criteria, they saw no certification path for EFVS equipment that could enable touchdown operations in visibilities of less than RVR 1,000 feet, which could limit investment in technology and adversely affect the benefits of the new EFVS operating rule. Sierra Nevada Corporation specifically requested that the FAA provide a certification path toward lower than 1,000 RVR.

The FAA's statement in the notice that it proposed to limit initial implementation of EFVS operations to touchdown and rollout to visibilities of no lower than RVR 1,000 feet was not intended to be an end point for EFVS authorizations. The FAA fully expects to develop authorizations and enable a certification path for EFVS operations to touchdown and rollout in less than RVR 1,000 feet conditions as EFVS technology is developed that will support those operations. The FAA recognizes that MASPS, as well as an operational concept, have been developed through RTCA SC–213 for EFVS operations to touchdown and rollout in less than RVR 1,000 feet conditions. The FAA intends to include operational and airworthiness certification guidance for those EFVS operations, based in large part on the industry recommendations found in DO–341. The FAA will publish acceptable methods of compliance for these reduced-visibility operations in future revisions of AC 20–167. Any proponent may propose an alternate

[79] Effective March 13, 2018, the FAA will remove paragraph (d)(1) and re-designate paragraphs (d)(2) and (d)(3) as (d)(1) and (d)(2).

[80] Effective March 13, 2018, paragraph (e)(1) will be revised to reference only § 91.176.

[81] Effective March 13, 2018, paragraphs (l) and (m) of § 91.175 will expire and paragraph (n) will be removed from § 91.175.

[82] Legal Interpretation, Letter to Mr. Phillip Kelsey from Mark W. Bury, Acting Assistant Chief Counsel for Regulations (September 20, 2013).

[83] Airworthiness and certification criteria to support EFVS operations to touchdown and rollout in visibilities as low as RVR 1,000 feet were developed through FAA and industry participation on RTCA Special Committee 213 (SC–213). RTCA SC–213 was tasked with developing minimum aviation system performance standards (MASPS) for both EFVS operations to 100 feet above the TDZE and EFVS operations to touchdown and rollout. The FAA incorporated MASPS for EFVS operations to 100 feet above the TDZE into AC 20–167, Airworthiness Approval of Enhanced Vision System, Synthetic Vision System, Combined Vision System, and Enhanced Flight Vision System Equipment. Because the airworthiness requirements to support EFVS operations in very low visibilities would be different than those conducted in a higher visibility range, SC–213 separated the MASPS for touchdown and rollout operations into two activities—MASPS for EFVS operations to touchdown and rollout down to RVR 1,000 feet and MASPS for EFVS operations to touchdown and rollout down to RVR 300 feet. The FAA has revised AC 20–167 to incorporate MASPS for EFVS operations to touchdown and rollout down to RVR 1,000 feet and published them in AC 20–167A.

method of compliance for an EFVS that would support those operations.

FedEx, Gulfstream, GAMA, and Elbit Systems of America noted that there are ongoing FAA/ICAO activities to harmonize requirements for low visibility taxi operations in visibilities as low as RVR 300 feet and that those activities assume EFVS will be an enabler for these operations. These commenters felt the FAA should provide a statement clarifying its intent with respect to low visibility taxi operations using EFVS, especially if the FAA limits EFVS operations to touchdown and rollout to RVR 1,000 feet and does not plan to incorporate RTCA DO–341 airworthiness criteria into AC 20–167A.

The FAA participates in several activities that seek to harmonize vision system standards, concepts, and practices to the extent practicable. Those activities include the HUD, EVS, SVS, and CVS Subgroup of the ICAO Operations Panel (ICAO HESC), the All Weather Operations Harmonization Aviation Rulemaking Committee (AWOH ARC), and the RTCA SC–213. The FAA notes that the EFVS rule does not preclude the use of EFVS during taxi operations and recognizes that using an EFVS can increase situation awareness during such operations. While there is no regulatory requirement in the U.S. for an airport to have an approved Low Visibility Operation/Surface Movement Guidance and Control System Plan when the visibility falls below RVR 1,200 feet, the FAA supports voluntary development of such plans and sees the value in harmonizing those operations to the extent practicable.

Dassault Aviation noted that the FAA made reference to RTCA DO–315, which was published on December 16, 2008. Dassault Aviation suggested that the FAA refer to RTCA DO–315B, instead.

The FAA's intent in referencing RTCA DO–315 was to reference the original version of the document, which first contained the MASPS for EFVS operations to 100 feet above the TDZE. The FAA recognizes that DO–315 was revised, and at this time, system design criteria for EFVS operations to touchdown and rollout are contained in RTCA DO–315B and DO–341.

K. Miscellaneous Issues

In this section, the FAA discusses a host of unrelated issues. Some of these issues were raised by commenters. Others resulted from the FAA's own review of the NPRM.

1. Minimum Crew Requirements

Eurocopter and American Eurocopter stated that the EFVS operation specified in § 91.176(a)(2) implies a new kind of operation that could impact minimum crew requirements. It recommended that the FAA revise §§ 23.1523, 25.1523, 27.1523, 29.1523, 23.1525, 25.1525, 27.1525, and 29.1525 to reflect EFVS operations.

The FAA disagrees. The minimum flight crew requirements in 14 CFR parts 23, 25, 27, and 29 are sufficient and effective in establishing the minimum flightcrew for the aircraft; they do not need to be revised to reflect EFVS operations.

2. Failure Modes

Boeing commented that the rule does not adequately address failure modes and crew responses. Boeing stated that natural vision appears to be a mitigator for the loss of EFVS during touchdown operations down to RVR 1000 feet. Boeing believes it is circular reasoning to allow EFVS to replace natural vision, and then depend on natural vision in the event of an EFVS failure. In addition, it believes design assurance levels for different technologies, for example ILS and EFVS, need to be similar to avoid biasing in favor of one technology over the other. Boeing recommended that availability and reliability requirements be specified in the rule or in AC 20–167A. Boeing stated these clarifications and revisions are necessary so that designers and operators will know what is expected in failure cases.

The FAA finds such revisions unnecessary. The requirements of §§ 23.1309, 25.1309, 27.1309, and 29.1309 apply to failure modes, hazard classifications, and failure probabilities. AC 20–167A further addresses specific system safety considerations.

The FAA has defined a means of compliance in AC 20–167A to use EFVS to provide sufficient enhanced flight visibility to complete an instrument approach and landing in visibility conditions as low as RVR 1000 feet.

Operationally, EFVS may be used to meet enhanced flight visibility and visual reference requirements for the instrument approach as stated in the NPRM. When the enhanced flight visibility and visual reference requirements of the regulations are met, descent and operation below the DA/DH may continue. However, certification applicants should account for failures of the EFVS in IMC below DA/DH. Generally, as with loss of visibility during conventional instrument approaches, a pilot may need to do a missed approach.

3. EFVS Equipment and Operational Considerations

ALPA and an individual commented that current IR-based EFVSs can take several minutes to warm up before they are able to be used in EFVS operations, and stated that operational guidance should account for this delay when an EFVS is powered up just prior to starting an instrument approach. The individual also commented that EFVS operations will require a high degree of system reliability during adverse weather conditions, and that if the EFVS were to malfunction close to the ground, a potentially unsafe condition could exist. The commenters recommended that EFVSs should have an in-flight checking capability to confirm that the system is fully operational prior to beginning an instrument approach procedure.

The commenters concerns are already addressed in § 61.66 and AC 90–106. Section 61.66(a) and (b) specify that ground and flight training must address preflight and in-flight preparation of EFVS equipment for EFVS operations. AC 90–106A, Section 5, contains guidance applicable to training and specifies that pilots should be familiar with the warm-up requirements of the system, along with other operational considerations, crew procedures, and crew coordination items. AC 20–167A also contains guidance on EFVS system performance, including system failure notifications. EFVS malfunctions detected by the system, which can adversely affect the normal operation of the EFVS, should be annunciated. At a minimum, specific in-flight failure messages for sensor failure and frozen image should be displayed to the flight crew.

4. Applicability of Previously Collected Data or Data Submitted on the Basis of Similarity

In its proposal, the FAA noted that under the 2004 EFVS rule, an EFVS installed on a U.S.-registered aircraft conducting EFVS operations to 100 feet above the TDZE must be installed on that aircraft in accordance with an FAA type design approval, namely a type certificate, amended type certificate, or supplemental type certificate. The FAA also stated that an EFVS that is currently certified to conduct EFVS operations to 100 feet above the TDZE may not meet the airworthiness standards necessary to support EFVS operations to touchdown and rollout. Section 91.176(a)(1)(i) requires an aircraft to be equipped with an operable EFVS that meets the applicable airworthiness requirements. Thus, the

FAA will require a similar certification process for an EFVS installed on an aircraft used in EFVS operations to touchdown and rollout.

Rockwell Collins asked whether credit could be given during the certification process for previously collected data. For example, if video data was collected during a previous EFVS performance demonstration that was conducted to 100 feet above the TDZE, could the operator take credit for that data with a follow-on demonstration that focused on rollout? It stated it believes this will be an ongoing issue the FAA will need to address in a consistent manner.

The FAA cannot assume that an EFVS that was only demonstrated and approved for EFVS operations to 100 feet above the TDZE will also be acceptable as a primary system for landing and rollout. Flight demonstrations specific to EFVS operations below 100 feet above the TDZE, landing, and rollout will usually be necessary. Flight test demonstrations will be specifically focused on showing compliance with specific requirements and criteria; hence, the flight test results may not be extrapolated beyond their original purposes. EFVS flight test demonstrations conducted prior to this rulemaking did not attempt to establish the ability to use the EFVS for landing or rollout. Prior flight testing that demonstrated the performance of the sensor in coping with the reported atmospheric conditions, particularly the collection and analysis of data comparing enhanced flight visibility to flight visibility may offer useful information in support of approval of the EFVS for landing and rollout. However, the EFVS should demonstrate that it can be relied on as the primary means for operation below 100 feet above the TDZE and for the landing and rollout.

CMC commented that certification credit for demonstrated EFVS performance should be transferable to other installations that have the same EFVS configuration. CMC pointed out that the details of an EFVS installation may differ from one installation to another, and it suggested that the FAA develop a framework for addressing these differences. It stated that credit transfer from one installation to another is not intended to replace all flight tests on a new platform or installation. Instead, the credit transfer would allow for the use of applicable data that was previously collected, in addition to flight test data on the new platform, to form the basis of an EFVS performance demonstration.

CMC asserted that this framework would enable EFVS suppliers, aircraft manufacturers, and operators to utilize previous flight test investments and thereby significantly reduce certification and performance capability demonstration costs.

The applicant may follow existing provisions and practices for establishing ''similarity'' of an equipment installation from one aircraft to another by providing compliance data approved for the other aircraft. The FAA will follow existing processes to evaluate the applicability of data submitted on the basis of similarity and recognizes the benefit in reducing repetitive certification and performance demonstration costs.

However, since EFVS equipment can perform differently on dissimilar aircraft, data used to show the compliance of one installation may not be appropriate for use in demonstrating the compliance of another installation.

5. Public Aircraft Operations

In the 2004 EFVS final rule and proposed § 91.176, the FAA did not distinguish between civil aircraft operations and public aircraft operations.[84] Thus, both the 2004 EFVS final rule and proposed § 91.176 applied to public aircraft operations, other than the U.S. military. Generally, public aircraft operations are not required to meet the same certification and airworthiness requirements that are imposed on civil aircraft. U.S. military aircraft generally meet military certification and airworthiness standards. Because EFVS operations are conducted in very low visibilities below minimums, the FAA finds that there cannot be a distinction among aircraft used to conduct EFVS operations in the National Airspace System. Each aircraft that is used to conduct an EFVS operation, regardless of whether the operation qualifies as a public aircraft operation, must meet the airworthiness and certification requirements set forth in § 91.176(a) or (b), as applicable to the EFVS operation being conducted (except U.S. military aircraft). Furthermore, each pilot flightcrew member conducting an EFVS operation, regardless of whether the operation qualifies as a public aircraft operation, is required to meet the training and recent flight experience requirements of § 61.66 (except U.S. military pilots). Accordingly, the FAA is adding § 91.176(c) to clarify that public aircraft operators who choose to conduct EFVS operations under § 91.176(a) or (b) must meet the previously stated requirements. The FAA recognizes that certain public aircraft operators who choose to conduct EFVS operations under § 91.176 may have aircraft that cannot meet the FAA's certification and airworthiness requirements. The FAA will consider the ability of these public aircraft to conduct EFVS operations on a case-by-case basis.

6. Qualification Requirements for Persons Conducting EFVS Operations in the United States

Section 91.176(a)(2)(vii) describes the necessary qualifications for persons conducting EFVS operations in the United States. In the NPRM, proposed § 91.176(a)(2)(vi) would have required, just as § 91.175(l)(5)(ii) required, each required pilot flightcrew member for a foreign person to meet the requirements of the civil aviation authority of the State of the operator. Section 129.1 defines ''foreign person'' as any person who is not a citizen of the United States and who operates a U.S.-registered aircraft in common carriage solely outside the United States. The FAA is concerned that a broader population than that defined by the term ''foreign person'' in § 129.1 will conduct EFVS operations in the United States. For example, the term ''foreign person'' failed to capture persons acting as required pilot flightcrew members for foreign air carriers subject to part 129, and any persons serving as required pilot flightcrew members of foreign registered aircraft. The FAA is, therefore, revising proposed § 91.176(a)(2)(vii) to more clearly identify the categories of persons who might conduct EFVS operations in the United States, and to ensure that the regulation adequately describes the necessary qualifications for these persons.

Section 91.176(a)(2)(vii)(A) now requires each person exercising the privileges of a U.S. pilot certificate, or any person serving as a required pilot flightcrew member of a U.S.-registered aircraft, to be qualified in accordance with part 61, and as applicable, the training, testing, and qualification provisions of parts 91 subpart K, 121, 125, or 135 that apply to the operation. Section 91.176(a)(2)(vii)(B) now requires each person acting as a required pilot flightcrew member for a foreign air carrier subject to part 129, or any person serving as a required pilot flightcrew member of a foreign registered aircraft to be qualified in accordance with the training requirements of the civil aviation authority of the State of the

[84] Section 1.1 defines ''civil aircraft'' as aircraft other than public aircraft. Therefore, if a regulation applies only to civil aircraft, it does not apply to public aircraft.

operator for the EFVS operation to be conducted.

7. Economic Comments

Boeing requested that the FAA explain how it established the number of aircraft used in the economic analysis so that operators can better judge their costs.

In order to estimate the total number of affected aircraft for the NPRM, the FAA asked original EFVS equipment manufacturers and aircraft manufacturers for the information. The FAA determined the total number of EFVS-equipped aircraft based on the responses received from those manufacturers. The FAA did not obtain a future equipment estimate from Boeing although the Agency requested that Boeing provide the projected number of aircraft it plans to equip or acquire with EFVS by year from 2012 onward. Boeing also commented that it is unclear in the NPRM whether the estimated paperwork burden is per airplane, per operator, or fleetwide. It stated that it can be deduced by subsequent paragraphs, but clarification of this issue would avoid confusion and lead to a clearer understanding.

The estimated paperwork burden of $86,000 covers the entire fleet of EFVS-equipped aircraft.

An individual stated that this rule could provide benefits to student pilots; however, one challenge would be increased training costs, including EFVS training.

The decision to conduct EFVS operations addressed by this rule is voluntary and optional. Therefore, this rule will not impose costs on a trainee who chooses not to conduct EFVS operations in the future. Furthermore, the FAA believes that student pilots typically will not conduct EFVS operations during their initial training.

Airbus commented on the training requirement cost in the proposed regulatory evaluation. Airbus stated that the incremental training cost of $750 per pilot does not take into account the benefits and the reduced operational costs that would result from a dual HUD configuration. The FAA did not take dual HUD configurations into account when estimating the incremental training cost of $750 because the FAA sought to use a conservative estimate in the regulatory evaluation.

Airbus explained that it cannot comment on certification costs because Airbus has not yet applied for EFVS certification. However, in commenting on the benefits section of the proposed regulatory evaluation, Airbus asked what the FAA expects from an applicant in terms of demonstrating that ''missed approaches and delayed take-offs'' are minimized.[85] The FAA does not expect nor require an EFVS operator to demonstrate benefits in order to utilize extended EFVS capabilities. The FAA believes that enhanced EFVS capabilities will result in unquantifiable benefits, which include the reduction of ''missed approaches and delayed take-offs.''

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 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) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest that readers seeking greater details read the full regulatory evaluation, a copy of which we placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify the costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or other private sectors by exceeding the threshold identified above. These analyses are summarized below.

Parties Potentially Affected by this Rulemaking

- Original equipment manufacturers (OEMs) producing enhanced flight vision systems (EFVS) or other vision systems, in accordance with parts 23, 25, 27, or 29
- Persons installing EFVS or other vision systems with a transparent display surface located in the pilot's outside field of view
- Persons conducting EFVS operations under parts 91, 121, 125, 129, or part 135
- Persons conducting EFVS training

Principal Assumptions and Sources of Information

- A 10-year period for this analysis is used because this period captures all significant cost impacts
- Discount rate is 7 percent (Office of Management & Budget, Circular A–4, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' October 29, 1992, p. 8, *www.whitehouse.gov/omb/circulars/index.html*)
- An average of 4 pilots assigned to each EFVS-equipped aircraft
- OEMs and two operators provided the number of EFVS-equipped aircraft
- Operators of some aircraft equipped with older EFVS units will not seek certification for EFVS to touchdown and rollout
- The estimation of the incremental training cost per person is approximately $750 based on data collected from training centers
- Certification costs of incremental EFVS capabilities to touchdown and rollout are approximately $1 million in the aggregate
- Aircraft operations over the next 10 years will grow at about 2.53% per year based on the FAA 2015 forecast (the general aviation turbojet, FAA Aerospace Forecast Fiscal Years 2015)[86].

Benefits of This Rule

Since this final rule is voluntary, the FAA expects those who choose to engage in extended EFVS operations will do so only if the expected benefit to them exceeds the cost they incur. The

[85] Airbus also asked what the FAA meant in terms of airborne sensor performance requirement. The FAA is not responding to this comment because it is outside the scope of the regulatory evaluation. The FAA reopened the comment period on August 20, 2015 to allow for comments on the regulatory evaluation only.

[86] The FAA forecast for active general aviation (GA) turbine jets is 2.53% for the period of 2015–2027.

final rule will enable expanded EFVS operations, which will increase access, efficiency and throughput in low visibility conditions, and minimize potential for missed approaches and delayed take-offs. In addition, EFVS permits low visibility operations on a greater number of approach procedure types. Changes in the U.S. aviation infrastructure,[87] such as the transition from incandescent to light-emitting diode (LED) approach lights, could potentially impact the near term benefits for persons using EFVS equipment, but may not impact future benefits of EFVS equipment designed to be interoperable with LEDs. The impact on the benefits is undetermined because both the infrastructure and EFVS capabilities are evolving. Benefits of this final rule will be realized by averting costs related to interrupted flight operations due to low visibility resulting in lost passenger time and extra fuel consumption.

Eliminating the requirement to obtain a waiver from Flight Standards when conducting certain EFVS operations will save applicants time for processing paperwork. Cost saving of waiver elimination is reflected in the FAA's paperwork reduction estimates.

Revisions to pilot compartment view requirements for vision systems with a transparent display surface located in the pilot's outside field of view will codify the current practice of issuing special conditions for each of these vision systems by providing industry with known requirements for the certification of these systems under parts 23, 25, 27, and 29. Because the revisions to pilot compartment view requirements will streamline the certification process for these vision systems by eliminating the need to issue special conditions, the FAA and applicants will save the associated time and expense. The full extent of these benefits has not been determined and therefore has not been quantified in this analysis.

Costs of This Rule

The regulatory costs attributed to the requirements are those above and beyond the current regulation and common practice. The FAA estimates compliance costs as the incremental differences in costs, resulting from the changes in training, equipment and certification requirements. Data were obtained from EFVS original equipment manufacturers, training centers, and two operators. The total incremental cost attributable to the requirements equals nominal training cost ($4.1 million) plus the initial certification cost ($1 million). The compliance cost of the equipment requirements is negligible. The total incremental cost of the final rule is approximately $5.1 million for the ten year period. The present value of that is approximately $4.1 million using a seven percent discount rate. The following table presents the summary of the regulatory costs in 2014 dollars (nominal value) and present value (PV).

Cost component	Nominal cost ($ million)	Present value at 7% ($ million)	Present value at 3% ($ million)
Training Cost	$4.1	$3.1	$3.5
Certification Cost	1	1	1
Equipment Cost			
Total	5.1	4.1	4.5

Benefit/Cost Summary

The total estimated cost of this final rule over 10 years is approximately $5.1 million nominal value or $4.1 million present value at a 7% discount rate. The annualized cost of this final rule in current dollar value is approximately a half million dollars. These estimated compliance costs will be incurred by those operators who want improved EFVS capabilities. OEMs are already proceeding with efforts to expand EFVS capabilities which, by itself, indicate the benefits of this final rule will likely exceed the costs. The revisions to pilot compartment view requirements for vision systems with a transparent display surface located in the pilot's outside field of view will not impose additional costs from those currently incurred using the special conditions process. The FAA believes the final rule will have benefits exceeding costs based on the likelihood that OEMs and operators will voluntarily incur the costs of the final rule in order to realize expected benefits.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) 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) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required.

As stated in the initial regulatory flexibility determination, the FAA expects many small entities will benefit from this final rule. The FAA did not receive comments on the initial regulatory flexibility determination. Prior to the final rule, the regulations permitted operators to conduct EFVS operations to 100 feet above the TDZE. The final rule permits operators to use an EFVS in lieu of natural vision from 100 feet above the TDZE to touchdown and rollout. Operators under parts 91, 91 subpart K, 121, 125, and 135 may conduct EFVS operations to touchdown and rollout under the final rule. Accordingly, the final rule may affect firms operating under those parts. The SBA size standard as defined in 13 CFR 121.201, is the largest size that a

[87] FAA airport infrastructure decisions are independent from this analysis.

business (including its subsidiaries and affiliates) may be to remain classified as a small business by the SBA. The SBA size standard in each of the four North American Industry Classification System (NAICS) air transportation industries is 1,500 employees.

We estimate that 982 aircraft are currently equipped with EFVS, which includes both large and small entities. Very few part 121 and part 135 operators have installed EFVS in their aircraft. A few part 91 subpart K, 121, or 135 operators have installed EFVS in their aircraft. Most of the operators with EFVS-equipped aircraft are part 91 operators (other than part 91 subpart K operators). Many part 91 operators are small entities.

For small entities who have been conducting EFVS operations to 100 feet above the TDZE under the old regulations, but who choose not to conduct EFVS operations to touchdown and rollout, the final rule does not impose additional cost. These small entities are still eligible to conduct EFVS operations to 100 feet above the TDZE using their old EFVS equipment, which has already been certified for EFVS operations to 100 feet above the TDZE. For small entities who have been conducting EFVS operations to 100 feet above the TDZE under the old regulations, but who choose to conduct EFVS operations to touchdown and rollout, the final rule will impose no additional installation costs because most systems installed after 2006 meet the requirements for EFVS operations to touchdown and rollout. The final rule will, however, impose training costs on these small entities. We estimate a one-time training cost of $750 per pilot, which accounts for the cost of training from 100 feet above the TDZE to touchdown and rollout. The FAA finds that this estimated training cost, even if for 4 pilots per aircraft, would not have a significant economic impact on the small entities affected by the final rule, because the equipment flown is valued in the tens of millions and these owners voluntarily incur these costs.

Therefore, for the reasons discussed above, the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the final rule will not impose obstacles to foreign commerce, as foreign exporters do not have to change their current export products to the United States; and that the final rule will impose the same costs on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), 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.

This action contains the following information collection requirements:

- Section 61.66 requires pilots to keep records of training and recent flight experience.
- Section 91.176(a) requires persons conducting operations under part 91 to conduct EFVS operations in accordance with letters of authorization for the use of EFVS.

Below, we discuss each of these information collection requirements in more detail.

The information collections in § 61.66 are already approved in OMB control number 2120–0021. The paperwork burden under § 61.66 comprises documentation of training, recent flight experience, and refresher training. The following analyses were conducted under Paperwork Reduction Act of 1995 (44 U.S.C. 3501). If some operators eventually choose to conduct EFVS operations to touchdown and rollout, the provisions of § 61.66 would result in a requirement to keep records of training, recent flight experience, and refresher training. The cost of the annualized paperwork burden is determined by multiplying the number of pilots per EFVS-equipped aircraft (four) by the number of EFVS aircraft (982) and then by the time of complying with the paperwork requirements for each pilot. Title 14 of the Code of Federal Regulations already require flight crewmembers to document and record training and aeronautical experience required to meet recent flight experience requirements. 14 CFR 61.51. Therefore, the paperwork burden resulting from § 61.66 is already accounted for in the cost estimate contained in OMB control number 2120–0021.

For ease of readability, we will explain the portion of the total cost estimate that pertains to documenting and recording EFVS recent flight experience. Operators are required to log their approaches using EFVS in 6 months in compliance with the recent flight experience requirements of the new rule. The action of logging each approach in a semiannual frequency can be done manually or electronically. We estimated the time required to complete recordkeeping by flight crewmembers would be about 0.10 hours semiannually or 0.20 hours annually. Assuming 3,928 pilots would be affected by the recordkeeping provisions of the rule, it would require about 786 hours of annual paperwork, and approximately $86,000 nominal cost at the maximum based on the average wage rate of $109 for flight crewmembers from the FAA Form 41. This hourly burden and cost is already accounted for under OMB control number 2120–0021.

The information collection in § 91.176(a) expands an existing OMB-approved collection of information that is approved under OMB control number 2120–0005. This collection of information governs information that the FAA collects in order to assure compliance with part 91. The

requirements in § 91.176(a) increase the burden of this already-existing collection of information. Section 91.176(a) pertains to EFVS operations to touchdown and rollout. Except as provided in paragraphs 91.176(a)(2)(ix) through 91.176(a)(2)(xii), a person conducting operations under part 91 must conduct the operation in accordance with a letter of authorization for the use of EFVS unless the operation is conducted in an aircraft that has been issued an experimental certificate under § 21.191 for the purpose of research and development or showing compliance with regulations. A person applying to the FAA for a letter of authorization must submit an application in a form and manner prescribed by the Administrator. Approximately 38 EFVS operators will spend about 0.5 hours annually to submit a letter of authorization to the FAA. Each paperwork hour costs approximately $23. Multiplying estimated written requests by average hour per request, we estimate the total annual paperwork burden to be 19 hours. We multiply 19 hours of paperwork burden by an estimated hour wage rate of $23 to derive the estimated annual paperwork cost burden to be $ 437. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted this information collection requirement to OMB for its review.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations. Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

Harmonization. The FAA participates on several vision system committees and working groups where international harmonization of standards, concepts, and practices is accomplished to the extent practicable. RTCA SC–213 was established December 2006 and is developing operational concepts and MASPS for EFVS, EVS, SVS, and CVS. The FAA, industry representatives from the United States and other countries, and other civil aviation authorities participate on this committee. Eurocae Work Group 79 is also a joint working group with RTCA SC–213. The ICAO HESC focuses on developing definitions, standards, and guidance material pertaining to vision systems for ICAO Annex 6, Parts I–III. The FAA is a member of the ICAO HESC subgroup and actively participates in this committee's activities and output. In 2012, the FAA established the AWOH ARC. Recognizing that significant issues exist within the international aviation community and regulators regarding interoperability and standardization for low visibility operations, the FAA established the AWOH ARC to identify areas where existing criteria and guidance are inadequate or nonexistent, to develop recommendations for implementing new regulatory criteria and guidance material needed by all stakeholders, and to produce consensus positions for global harmonization. In addition to other low visibility initiatives, the AWOH ARC facilitates international understanding of EFVS operations and provides recommendations for harmonizing those operations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How to Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

- Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
- Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

14 CFR Part 25

Aircraft, Aviation safety.

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 91

Air carrier, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

■ 1. The authority citation for part 1 is revised to read as follows:

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

■ 2. Amend § 1.1 by adding the definition of ''EFVS operation'' in alphabetical order and by revising the definition for ''Enhanced flight vision system (EFVS)'' to read as follows:

§ 1.1 General definitions.

* * * * *

EFVS operation means an operation in which visibility conditions require an EFVS to be used in lieu of natural vision to perform an approach or landing, determine enhanced flight visibility, identify required visual references, or conduct a rollout.

Enhanced flight vision system (EFVS) means an installed aircraft system which uses an electronic means to provide a display of the forward external scene topography (the natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, including but not limited to forward-looking infrared, millimeter wave radiometry, millimeter wave radar, or low-light level image intensification. An EFVS includes the display element, sensors, computers and power supplies, indications, and controls.

* * * * *

■ 3. Amend § 1.2 by adding the abbreviation ''VGSI'' in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

VGSI means visual glide slope indicator.

* * * * *

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

■ 4. The authority citation for part 23 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704.

■ 5. Amend § 23.773 by adding paragraph (c) to read as follows:

§ 23.773 Pilot compartment view.

* * * * *

(c) A vision system with a transparent display surface located in the pilot's outside field of view, such as a head up-display, head mounted display, or other equivalent display, must meet the following requirements:

(1) While the vision system display is in operation, it must compensate for interference with the pilot's outside field of view such that the combination of what is visible in the display and what remains visible through and around it, enables the pilot to perform the maneuvers specified in paragraph (a)(1) of this section and the pilot compartment to meet the provisions of paragraph (a)(2) of this section.

(2) The pilot's view of the external scene may not be distorted by the transparent display surface or by the vision system imagery. When the vision system displays imagery and any symbology referenced to the imagery and outside scene topography, including attitude symbology, flight path vector, and flight path angle reference cue, that imagery and symbology must be aligned with, and scaled to, the external scene.

(3) The vision system must provide a means to allow the pilot using the display to immediately deactivate and reactivate the vision system imagery, on demand, without removing the pilot's hands from the primary flight controls or thrust controls.

(4) When the vision system is not in operation it may not restrict the pilot from performing the maneuvers specified in paragraph (a)(1) of this section and the pilot compartment from meeting the provisions of paragraph (a)(2) of this section.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 6. The authority citation for part 25 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702 and 44704.

■ 7. Amend § 25.773 by adding paragraph (e) to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(e) *Vision systems with transparent displays.* A vision system with a transparent display surface located in the pilot's outside field of view, such as a head up-display, head mounted display, or other equivalent display, must meet the following requirements in nonprecipitation and precipitation conditions:

(1) While the vision system display is in operation, it must compensate for interference with the pilot's outside field of view such that the combination of what is visible in the display and what remains visible through and around it, enables the pilot to perform the maneuvers and normal duties of paragraph (a) of this section.

(2) The pilot's view of the external scene may not be distorted by the transparent display surface or by the vision system imagery. When the vision system displays imagery or any symbology that is referenced to the imagery and outside scene topography, including attitude symbology, flight path vector, and flight path angle reference cue, that imagery and symbology must be aligned with, and scaled to, the external scene.

(3) The vision system must provide a means to allow the pilot using the display to immediately deactivate and reactivate the vision system imagery, on demand, without removing the pilot's hands from the primary flight controls or thrust controls.

(4) When the vision system is not in operation it may not restrict the pilot

from performing the maneuvers specified in paragraph (a)(1) of this section or the pilot compartment from meeting the provisions of paragraph (a)(2) of this section.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 8. The authority citation for part 27 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704.

■ 9. Amend § 27.773 by adding paragraph (c) to read as follows:

§ 27.773 Pilot compartment view.

* * * * *

(c) A vision system with a transparent display surface located in the pilot's outside field of view, such as a head up-display, head mounted display, or other equivalent display, must meet the following requirements:

(1) While the vision system display is in operation, it must compensate for interference with the pilot's outside field of view such that the combination of what is visible in the display and what remains visible through and around it, allows the pilot compartment to satisfy the requirements of paragraphs (a)(1) and (b) of this section.

(2) The pilot's view of the external scene may not be distorted by the transparent display surface or by the vision system imagery. When the vision system displays imagery or any symbology that is referenced to the imagery and outside scene topography, including attitude symbology, flight path vector, and flight path angle reference cue, that imagery and symbology must be aligned with, and scaled to, the external scene.

(3) The vision system must provide a means to allow the pilot using the display to immediately deactivate and reactivate the vision system imagery, on demand, without removing the pilot's hands from the primary flight and power controls, or their equivalent.

(4) When the vision system is not in operation it must permit the pilot compartment to satisfy the requirements of paragraphs (a)(1) and (b) of this section.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 10. The authority citation for part 29 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704.

■ 11. Amend § 29.773 by adding paragraph (c) to read as follows:

§ 29.773 Pilot compartment view.

* * * * *

(c) *Vision systems with transparent displays.* A vision system with a transparent display surface located in the pilot's outside field of view, such as a head up-display, head mounted display, or other equivalent display, must meet the following requirements in nonprecipitation and precipitation conditions:

(1) While the vision system display is in operation, it must compensate for interference with the pilot's outside field of view such that the combination of what is visible in the display and what remains visible through and around it, allows the pilot compartment to satisfy the requirements of paragraphs (a) and (b) of this section.

(2) The pilot's view of the external scene may not be distorted by the transparent display surface or by the vision system imagery. When the vision system displays imagery or any symbology that is referenced to the imagery and outside scene topography, including attitude symbology, flight path vector, and flight path angle reference cue, that imagery and symbology must be aligned with, and scaled to, the external scene.

(3) The vision system must provide a means to allow the pilot using the display to immediately deactivate and reactivate the vision system imagery, on demand, without removing the pilot's hands from the primary flight and power controls, or their equivalent.

(4) When the vision system is not in operation it must permit the pilot compartment to satisfy the requirements of paragraphs (a) and (b) of this section.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 12. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 13. Amend § 61.57 by revising paragraphs (e)(2) and (3) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(e) * * *

(2) This section does not apply to a pilot in command who is employed by a part 119 certificate holder authorized to conduct operations under part 121 when the pilot is engaged in a flight operation under part 91 or 121 for that certificate holder if the pilot in command complies with §§ 121.436 and 121.439 of this chapter.

(3) This section does not apply to a pilot in command who is employed by a part 119 certificate holder authorized to conduct operations under part 135 when the pilot is engaged in a flight operation under parts 91 or 135 for that certificate holder if the pilot in command is in compliance with §§ 135.243 and 135.247 of this chapter.

* * * * *

■ 14. Add § 61.66 to read as follows:

§ 61.66 Enhanced Flight Vision System Pilot Requirements

(a) *Ground training.* (1) Except as provided under paragraphs (f) and (h) of this section, no person may manipulate the controls of an aircraft or act as pilot in command of an aircraft during an EFVS operation conducted under § 91.176(a) or (b) of this chapter, or serve as a required pilot flightcrew member during an EFVS operation conducted under § 91.176(a) of this chapter, unless that person—

(i) Receives and logs ground training under a training program approved by the Administrator; and

(ii) Obtains a logbook or training record endorsement from an authorized training provider certifying the person satisfactorily completed the ground training appropriate to the category of aircraft for which the person is seeking the EFVS privilege.

(2) The ground training must include the following subjects:

(i) Those portions of this chapter that relate to EFVS flight operations and limitations, including the Airplane Flight Manual or Rotorcraft Flight Manual limitations;

(ii) EFVS sensor imagery, required aircraft flight information, and flight symbology;

(iii) EFVS display, controls, modes, features, symbology, annunciations, and associated systems and components;

(iv) EFVS sensor performance, sensor limitations, scene interpretation, visual anomalies, and other visual effects;

(v) Preflight planning and operational considerations associated with using EFVS during taxi, takeoff, climb, cruise, descent and landing phases of flight, including the use of EFVS for instrument approaches, operating below DA/DH or MDA, executing missed approaches, landing, rollout, and balked landings;

(vi) Weather associated with low visibility conditions and its effect on EFVS performance;

(vii) Normal, abnormal, emergency, and crew coordination procedures when using EFVS; and

(viii) Interpretation of approach and runway lighting systems and their display characteristics when using an EFVS.

(b) *Flight training.* (1) Except as provided under paragraph (h) of this section, no person may manipulate the controls of an aircraft or act as pilot in command of an aircraft during an EFVS operation under § 91.176(a) or (b) of this chapter unless that person—

(i) Receives and logs flight training for the EFVS operation under a training program approved by the Administrator; and

(ii) Obtains a logbook or training record endorsement from an authorized training provider certifying the person is proficient in the use of EFVS in the category of aircraft in which the training was provided for the EFVS operation to be conducted.

(2) Flight training must include the following tasks:

(i) Preflight and inflight preparation of EFVS equipment for EFVS operations, including EFVS setup and use of display, controls, modes and associated systems, and adjustments for brightness and contrast under day and night conditions;

(ii) Proper piloting techniques associated with using EFVS during taxi, takeoff, climb, cruise, descent, landing, and rollout, including missed approaches and balked landings;

(iii) Proper piloting techniques for the use of EFVS during instrument approaches, to include operations below DA/DH or MDA as applicable to the EFVS operations to be conducted, under both day and night conditions;

(iv) Determining enhanced flight visibility;

(v) Identifying required visual references appropriate to EFVS operations;

(vi) Transitioning from EFVS sensor imagery to natural vision acquisition of required visual references and the runway environment;

(vii) Using EFVS sensor imagery, required aircraft flight information, and flight symbology to touchdown and rollout, if the person receiving training will conduct EFVS operations under § 91.176(a) of this chapter; and

(viii) Normal, abnormal, emergency, and crew coordination procedures when using an EFVS.

(c) *Supplementary EFVS training.* A person qualified to conduct an EFVS operation under § 91.176(a) or (b) of this chapter who seeks to conduct an additional EFVS operation for which that person has not received training must—

(1) Receive and log the ground and flight training required by paragraphs (a) and (b) of this section, under a training program approved by the Administrator, appropriate to the additional EFVS operation to be conducted; and

(2) Obtain a logbook or training record endorsement from the authorized training provider certifying the person is proficient in the use of EFVS in the category of aircraft in which the training was provided for the EFVS operation to be conducted.

(d) *Recent flight experience: EFVS.* Except as provided in paragraphs (f) and (h) of this section, no person may manipulate the controls of an aircraft during an EFVS operation or act as pilot in command of an aircraft during an EFVS operation unless, within 6 calendar months preceding the month of the flight, that person performs and logs six instrument approaches as the sole manipulator of the controls using an EFVS under any weather conditions in the category of aircraft for which the person seeks the EFVS privilege. The instrument approaches may be performed in day or night conditions; and

(1) One approach must terminate in a full stop landing; and

(2) For persons authorized to exercise the privileges of § 91.176(a), the full stop landing must be conducted using the EFVS.

(e) *EFVS refresher training.* (1) Except as provided in paragraph (h) of this section, a person who has failed to meet the recent flight experience requirements of paragraph (d) of this section for more than six calendar months may reestablish EFVS currency only by satisfactorily completing an approved EFVS refresher course in the category of aircraft for which the person seeks the EFVS privilege. The EFVS refresher course must consist of the subjects and tasks listed in paragraphs (a)(2) and (b)(2) of this section applicable to the EFVS operations to be conducted.

(2) The EFVS refresher course must be conducted by an authorized training provider whose instructor meets the training requirements of this section and, if conducting EFVS operations in an aircraft, the recent flight experience requirements of this section.

(f) *Military pilots and former military pilots in the U.S. Armed Forces.* (1) The training requirements of paragraphs (a) and (b) of this section applicable to EFVS operations conducted under § 91.176(a) of this chapter do not apply to a military pilot or former military pilot in the U.S. Armed Forces if that person documents satisfactory completion of ground and flight training in EFVS operations to touchdown and rollout by the U.S. Armed Forces.

(2) The training requirements in paragraphs (a) and (b) of this section applicable to EFVS operations conducted under § 91.176(b) of this chapter do not apply to a military pilot or former military pilot in the U.S. Armed Forces if that person documents satisfactory completion of ground and flight training in EFVS operations to 100 feet above the touchdown zone elevation by the U.S. Armed Forces.

(3) A military pilot or former military pilot in the U.S. Armed Forces may satisfy the recent flight experience requirements of paragraph (d) of this section if he or she documents satisfactory completion of an EFVS proficiency check in the U.S. Armed Forces within 6 calendar months preceding the month of the flight, the check was conducted by a person authorized by the U.S. Armed Forces to administer the check, and the person receiving the check was a member of the U.S. Armed Forces at the time the check was administered.

(g) *Use of full flight simulators.* A level C or higher full flight simulator (FFS) equipped with an EFVS may be used to meet the flight training, recent flight experience, and refresher training requirements of this section. The FFS must be evaluated and qualified for EFVS operations by the Administrator, and must be:

(1) Qualified and maintained in accordance with part 60 of this chapter, or a previously qualified device, as permitted in accordance with § 60.17 of this chapter;

(2) Approved by the Administrator for the tasks and maneuvers to be conducted; and

(3) Equipped with a daylight visual display if being used to meet the flight training requirements of this section.

(h) *Exceptions.* (1) A person may manipulate the controls of an aircraft during an EFVS operation without meeting the requirements of this section in the following circumstances:

(i) When receiving flight training to meet the requirements of this section under an approved training program, provided the instructor meets the requirements in this section to perform the EFVS operation in the category of aircraft for which the training is being conducted.

(ii) During an EFVS operation performed in the course of satisfying the recent flight experience requirements of paragraph (d) of this section, provided another individual is serving as pilot in command of the aircraft during the EFVS operation and that individual meets the requirements in this section to perform the EFVS operation in the

category of aircraft in which the flight is being conducted.

(iii) During an EFVS operation performed in the course of completing EFVS refresher training in accordance with paragraph (e) of this section, provided the instructor providing the refresher training meets the requirements in this section to perform the EFVS operation in the category of aircraft for which the training is being conducted.

(2) The requirements of paragraphs (a) and (b) of this section do not apply if a person is conducting a flight or series of flights in an aircraft issued an experimental airworthiness certificate under § 21.191 of this chapter for the purpose of research and development or showing compliance with regulations, provided the person has knowledge of the subjects specified in paragraph (a)(2) of this section and has experience with the tasks specified in paragraph (b)(2) of this section applicable to the EFVS operations to be conducted.

(3) The requirements specified in paragraphs (d) and (e) of this section do not apply to a pilot who:

(i) Is employed by a part 119 certificate holder authorized to conduct operations under part 121, 125, or 135 when the pilot is conducting an EFVS operation for that certificate holder under part 91, 121, 125, or 135, as applicable, provided the pilot conducts the operation in accordance with the certificate holder's operations specifications for EFVS operations;

(ii) Is employed by a person who holds a letter of deviation authority issued under § 125.3 of this chapter when the pilot is conducting an EFVS operation for that person under part 125, provided the pilot is conducting the operation in accordance with that person's letter of authorization for EFVS operations; or

(iii) Is employed by a fractional ownership program manager to conduct operations under part 91 subpart K when the pilot is conducting an EFVS operation for that program manager under part 91, provided the pilot is conducting the operation in accordance with the program manager's management specifications for EFVS operations.

(4) The requirements of paragraphs (a) and (b) of this section do not apply if a person is conducting EFVS operations under § 91.176(b) of this chapter and that person documents that prior to March 13, 2018, that person satisfactorily completed ground and flight training on EFVS operations to 100 feet above the touchdown zone elevation.

(5) The requirements specified in this section do not apply if a person is conducting an EFVS operation to 100 feet above the touchdown zone elevation in accordance with the requirements of § 91.175(l) and (m) of this chapter prior to March 13, 2018.

§ 61.66 [Amended]

■ 15. Effective March 13, 2018, amend § 61.66 by removing paragraph (h)(5).

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 16. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 17. Amend § 91.175 as follows:
■ a. Revise paragraphs (c) introductory text and (c)(3)(vi);
■ b. Redesignate paragraph (d)(2) as paragraph (d)(3) and revise it;
■ c. Add new paragraph (d)(2);
■ d. Revise paragraph (e)(1); and
■ e. Add paragraph (n).

The revisions and addition read as follows:

§ 91.175 Takeoff and landing under IFR.

* * * * *

(c) *Operation below DA/DH or MDA.* Except as provided in paragraph (l) of this section or § 91.176 of this chapter, where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(3) * * *

(vi) The visual glideslope indicator.

* * * * *

(d) * * *

(2) For operations conducted under § 91.176 of this part, the requirements of paragraphs (a)(3)(iii) or (b)(3)(iii), as applicable, of that section are not met; or

(3) For all other operations under this part and parts 121, 125, 129, and 135, the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) * * *

(1) Whenever operating an aircraft pursuant to paragraph (c) or (l) of this section or § 91.176 of this chapter, and the requirements of that paragraph or section are not met at either of the following times:

* * * * *

(n) Before March 13, 2018, a person conducting an EFVS operation to 100 feet above the touchdown zone elevation must comply with either the requirements of paragraphs (l) and (m) of this section or with the requirements of § 91.176(b) of this part. Beginning on March 13, 2018, a person conducting an EFVS operation to 100 feet above the touchdown zone elevation must comply with the requirements of § 91.176(b) of this part. The requirements of paragraphs (l) and (m) of this section will expire on March 13, 2018.

■ 18. Effective March 13, 2018, amend § 91.175 as follows:
■ a. Revise paragraph (c) introductory text;
■ b. Remove paragraph (d)(1);
■ c. Redesignate paragraphs (d)(2) and (3) as (d)(1) and (2), respectively;
■ d. Revise paragraph (e)(1); and
■ e. Remove paragraphs (l), (m), and (n).

The revisions read as follows:

§ 91.175 Takeoff and landing under IFR.

* * * * *

(c) *Operation below DA/DH or MDA.* Except as provided in § 91.176 of this chapter, where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(e) * * *

(1) Whenever operating an aircraft pursuant to paragraph (c) of this section or § 91.176 of this part, and the requirements of that paragraph or section are not met at either of the following times:

* * * * *

■ 19. Add § 91.176 to read as follows:

§ 91.176 Straight-in landing operations below DA/DH or MDA using an enhanced flight vision system (EFVS) under IFR.

(a) *EFVS operations to touchdown and rollout.* Unless otherwise authorized by the Administrator to use an MDA as a DA/DH with vertical navigation on an instrument approach procedure, or unless paragraph (d) of this section applies, no person may conduct an EFVS operation in an aircraft, except a military aircraft of the United States, at any airport below the authorized DA/DH to touchdown and rollout unless the minimums used for the particular approach procedure being flown include a DA or DH, and the following requirements are met:

(1) *Equipment.* (i) The aircraft must be equipped with an operable EFVS that

meets the applicable airworthiness requirements. The EFVS must:

(A) Have an electronic means to provide a display of the forward external scene topography (the applicable natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, including but not limited to forward-looking infrared, millimeter wave radiometry, millimeter wave radar, or low-light level image intensification.

(B) Present EFVS sensor imagery, aircraft flight information, and flight symbology on a head up display, or an equivalent display, so that the imagery, information and symbology are clearly visible to the pilot flying in his or her normal position with the line of vision looking forward along the flight path. Aircraft flight information and flight symbology must consist of at least airspeed, vertical speed, aircraft attitude, heading, altitude, height above ground level such as that provided by a radio altimeter or other device capable of providing equivalent performance, command guidance as appropriate for the approach to be flown, path deviation indications, flight path vector, and flight path angle reference cue. Additionally, for aircraft other than rotorcraft, the EFVS must display flare prompt or flare guidance.

(C) Present the displayed EFVS sensor imagery, attitude symbology, flight path vector, and flight path angle reference cue, and other cues, which are referenced to the EFVS sensor imagery and external scene topography, so that they are aligned with, and scaled to, the external view.

(D) Display the flight path angle reference cue with a pitch scale. The flight path angle reference cue must be selectable by the pilot to the desired descent angle for the approach and be sufficient to monitor the vertical flight path of the aircraft.

(E) Display the EFVS sensor imagery, aircraft flight information, and flight symbology such that they do not adversely obscure the pilot's outside view or field of view through the cockpit window.

(F) Have display characteristics, dynamics, and cues that are suitable for manual control of the aircraft to touchdown in the touchdown zone of the runway of intended landing and during rollout.

(ii) When a minimum flightcrew of more than one pilot is required, the aircraft must be equipped with a display that provides the pilot monitoring with EFVS sensor imagery. Any symbology displayed may not adversely obscure the sensor imagery of the runway environment.

(2) *Operations.* (i) The pilot conducting the EFVS operation may not use circling minimums.

(ii) Each required pilot flightcrew member must have adequate knowledge of, and familiarity with, the aircraft, the EFVS, and the procedures to be used.

(iii) The aircraft must be equipped with, and the pilot flying must use, an operable EFVS that meets the equipment requirements of paragraph (a)(1) of this section.

(iv) When a minimum flightcrew of more than one pilot is required, the pilot monitoring must use the display specified in paragraph (a)(1)(ii) to monitor and assess the safe conduct of the approach, landing, and rollout.

(v) The aircraft must continuously be in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers.

(vi) The descent rate must allow touchdown to occur within the touchdown zone of the runway of intended landing.

(vii) Each required pilot flightcrew member must meet the following requirements—

(A) A person exercising the privileges of a pilot certificate issued under this chapter, any person serving as a required pilot flightcrew member of a U.S.-registered aircraft, or any person serving as a required pilot flightcrew member for a part 121, 125, or 135 operator, must be qualified in accordance with part 61 and, as applicable, the training, testing, and qualification provisions of subpart K of this part, part 121, 125, or 135 of this chapter that apply to the operation; or

(B) Each person acting as a required pilot flightcrew member for a foreign air carrier subject to part 129, or any person serving as a required pilot flightcrew member of a foreign registered aircraft, must be qualified in accordance with the training requirements of the civil aviation authority of the State of the operator for the EFVS operation to be conducted.

(viii) A person conducting operations under this part must conduct the operation in accordance with a letter of authorization for the use of EFVS unless the operation is conducted in an aircraft that has been issued an experimental certificate under § 21.191 of this chapter for the purpose of research and development or showing compliance with regulations, or the operation is being conducted by a person otherwise authorized to conduct EFVS operations under paragraphs (a)(2)(ix) through (xii) of this section. A person applying to the FAA for a letter of authorization must submit an application in a form and manner prescribed by the Administrator.

(ix) A person conducting operations under subpart K of this part must conduct the operation in accordance with management specifications authorizing the use of EFVS.

(x) A person conducting operations under part 121, 129, or 135 of this chapter must conduct the operation in accordance with operations specifications authorizing the use of EFVS.

(xi) A person conducting operations under part 125 of this chapter must conduct the operation in accordance with operations specifications authorizing the use of EFVS or, for a holder of a part 125 letter of deviation authority, a letter of authorization for the use of EFVS.

(xii) A person conducting an EFVS operation during an authorized Category II or Category III operation must conduct the operation in accordance with operations specifications, management specifications, or a letter of authorization authorizing EFVS operations during authorized Category II or Category III operations.

(3) *Visibility and visual reference requirements.* No pilot operating under this section or §§ 121.651, 125.381, or 135.225 of this chapter may continue an approach below the authorized DA/DH and land unless:

(i) The pilot determines that the enhanced flight visibility observed by use of an EFVS is not less than the visibility prescribed in the instrument approach procedure being used.

(ii) From the authorized DA/DH to 100 feet above the touchdown zone elevation of the runway of intended landing, any approach light system or both the runway threshold and the touchdown zone are distinctly visible and identifiable to the pilot using an EFVS.

(A) The pilot must identify the runway threshold using at least one of the following visual references—

(*1*) The beginning of the runway landing surface;

(*2*) The threshold lights; or

(*3*) The runway end identifier lights.

(B) The pilot must identify the touchdown zone using at least one of the following visual references—

(*1*) The runway touchdown zone landing surface;

(*2*) The touchdown zone lights;

(*3*) The touchdown zone markings; or

(*4*) The runway lights.

(iii) At 100 feet above the touchdown zone elevation of the runway of intended landing and below that

altitude, the enhanced flight visibility using EFVS must be sufficient for one of the following visual references to be distinctly visible and identifiable to the pilot—

(A) The runway threshold;

(B) The lights or markings of the threshold;

(C) The runway touchdown zone landing surface; or

(D) The lights or markings of the touchdown zone.

(4) *Additional requirements.* The Administrator may prescribe additional equipment, operational, and visibility and visual reference requirements to account for specific equipment characteristics, operational procedures, or approach characteristics. These requirements will be specified in an operator's operations specifications, management specifications, or letter of authorization authorizing the use of EFVS.

(b) *EFVS operations to 100 feet above the touchdown zone elevation.* Except as specified in paragraph (d) of this section, no person may conduct an EFVS operation in an aircraft, except a military aircraft of the United States, at any airport below the authorized DA/DH or MDA to 100 feet above the touchdown zone elevation unless the following requirements are met:

(1) *Equipment.* (i) The aircraft must be equipped with an operable EFVS that meets the applicable airworthiness requirements.

(ii) The EFVS must meet the requirements of paragraph (a)(1)(i)(A) through (F) of this section, but need not present flare prompt, flare guidance, or height above ground level.

(2) *Operations.* (i) The pilot conducting the EFVS operation may not use circling minimums.

(ii) Each required pilot flightcrew member must have adequate knowledge of, and familiarity with, the aircraft, the EFVS, and the procedures to be used.

(iii) The aircraft must be equipped with, and the pilot flying must use, an operable EFVS that meets the equipment requirements of paragraph (b)(1) of this section.

(iv) The aircraft must continuously be in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers.

(v) For operations conducted under part 121 or part 135 of this chapter, the descent rate must allow touchdown to occur within the touchdown zone of the runway of intended landing.

(vi) Each required pilot flightcrew member must meet the following requirements—

(A) A person exercising the privileges of a pilot certificate issued under this chapter, any person serving as a required pilot flightcrew member of a U.S.-registered aircraft, or any person serving as a required pilot flightcrew member for a part 121, 125, or 135 operator, must be qualified in accordance with part 61 and, as applicable, the training, testing, and qualification provisions of subpart K of this part, part 121, 125, or 135 of this chapter that apply to the operation; or

(B) Each person acting as a required pilot flightcrew member for a foreign air carrier subject to part 129, or any person serving as a required pilot flightcrew member of a foreign registered aircraft, must be qualified in accordance with the training requirements of the civil aviation authority of the State of the operator for the EFVS operation to be conducted.

(vii) A person conducting operations under subpart K of this part must conduct the operation in accordance with management specifications authorizing the use of EFVS.

(viii) A person conducting operations under part 121, 129, or 135 of this chapter must conduct the operation in accordance with operations specifications authorizing the use of EFVS.

(ix) A person conducting operations under part 125 of this chapter must conduct the operation in accordance with operations specifications authorizing the use of EFVS or, for a holder of a part 125 letter of deviation authority, a letter of authorization for the use of EFVS.

(x) A person conducting an EFVS operation during an authorized Category II or Category III operation must conduct the operation in accordance with operations specifications, management specifications, or a letter of authorization authorizing EFVS operations during authorized Category II or Category III operations.

(3) *Visibility and Visual Reference Requirements.* No pilot operating under this section or § 121.651, § 125.381, or § 135.225 of this chapter may continue an approach below the authorized MDA or continue an approach below the authorized DA/DH and land unless:

(i) The pilot determines that the enhanced flight visibility observed by use of an EFVS is not less than the visibility prescribed in the instrument approach procedure being used.

(ii) From the authorized MDA or DA/DH to 100 feet above the touchdown zone elevation of the runway of intended landing, any approach light system or both the runway threshold and the touchdown zone are distinctly visible and identifiable to the pilot using an EFVS.

(A) The pilot must identify the runway threshold using at least one of the following visual references–

(*1*) The beginning of the runway landing surface;

(*2*) The threshold lights; or

(*3*) The runway end identifier lights.

(B) The pilot must identify the touchdown zone using at least one of the following visual references—

(*1*) The runway touchdown zone landing surface;

(*2*) The touchdown zone lights;

(*3*) The touchdown zone markings; or

(*4*) The runway lights.

(iii) At 100 feet above the touchdown zone elevation of the runway of intended landing and below that altitude, the flight visibility must be sufficient for—

(A) The runway threshold;

(B) The lights or markings of the threshold;

(C) The runway touchdown zone landing surface; or

(D) The lights or markings of the touchdown zone.

(4) Compliance Date. Beginning on March 13, 2018, a person conducting an EFVS operation to 100 feet above the touchdown zone elevation must comply with the requirements of paragraph (b) of this section.

(c) *Public aircraft certification and training requirements.* A public aircraft operator, other than the U.S. military, may conduct an EFVS operation under paragraph (a) or (b) of this section only if:

(1) The aircraft meets all of the civil certification and airworthiness requirements of paragraph (a)(1) or (b)(1) of this section, as applicable to the EFVS operation to be conducted; and

(2) The pilot flightcrew member, or any other person who manipulates the controls of an aircraft during an EFVS operation, meets the training, recent flight experience and refresher training requirements of § 61.66 of this chapter applicable to EFVS operations.

(d) *Exception for Experimental Aircraft.* The requirement to use an EFVS that meets the applicable airworthiness requirements specified in paragraphs (a)(1)(i), (a)(2)(iii), (b)(1)(i), and (b)(2)(iii) of this section does not apply to operations conducted in an aircraft issued an experimental certificate under § 21.191 of this chapter for the purpose of research and development or showing compliance with regulations, provided the Administrator has determined that the operations can be conducted safely in accordance with operating limitations issued for that purpose.

■ 20. Amend § 91.189 by revising paragraph (d) introductory text and paragraph (e) to read as follows:

§ 91.189 Category II and III operations: General operating rules.

* * * * *

(d) Except as provided in § 91.176 of this part or unless otherwise authorized by the Administrator, no pilot operating an aircraft in a Category II or Category III approach that provides and requires the use of a DA/DH may continue the approach below the authorized decision height unless the following conditions are met:

* * * * *

(e) Except as provided in § 91.176 of this part or unless otherwise authorized by the Administrator, each pilot operating an aircraft shall immediately execute an appropriate missed approach whenever, prior to touchdown, the requirements of paragraph (d) of this section are not met.

* * * * *

■ 21. Amend § 91.905 by adding an entry for § 91.176 in numerical order to read as follows:

§ 91.905 List of rules subject to waivers.

Sec.

* * * * *

91.176 Operations below DA/DH or MDA using an enhanced flight vision system (EFVS) under IFR.

* * * * *

■ 22. Amend § 91.1039 by revising paragraph (e) to read as follows:

§ 91.1039 IFR takeoff, approach and landing minimums.

* * * * *

(e) Except as provided in §§ 91.175(l) or 91.176 of this chapter, each pilot making an IFR takeoff or approach and landing at an airport must comply with applicable instrument approach procedures and takeoff and landing weather minimums prescribed by the authority having jurisdiction over the airport. In addition, no pilot may take off at that airport when the visibility is less than 600 feet, unless otherwise authorized in the program manager's management specifications for EFVS operations.

■ 23. Effective March 13, 2018, amend § 91.1039 by revising paragraph (e) to read as follows:

§ 91.1039 IFR takeoff, approach and landing minimums.

* * * * *

(e) Except as provided in § 91.176 of this chapter, each pilot making an IFR takeoff or approach and landing at an airport must comply with applicable instrument approach procedures and takeoff and landing weather minimums prescribed by the authority having jurisdiction over the airport. In addition, no pilot may take off at that airport when the visibility is less than 600 feet, unless otherwise authorized in the program manager's management specifications for EFVS operations.

■ 24. Amend § 91.1065 by adding paragraph (g) to read as follows:

§ 91.1065 Initial and recurrent pilot testing requirements.

* * * * *

(g) If the program manager is authorized to conduct EFVS operations, the competency check in paragraph (b) of this section must include tasks appropriate to the EFVS operations the certificate holder is authorized to conduct.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 25. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 26. Amend § 121.651 by revising paragraphs (b) introductory text, (c) introductory text, and (d) introductory text, redesignating paragraphs (e) and (f) as paragraphs (f) and (g), and adding new paragraph (e) to read as follows:

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, no pilot may continue an approach past the final approach fix, or where a final approach fix is not used, begin the final approach segment of an instrument approach procedure—

(c) A pilot who has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section, and after that receives a later weather report indicating below-minimum conditions, may continue the approach to DA/DH or MDA. Upon reaching DA/DH or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DA/DH or MDA if either the requirements of § 91.175(l) or § 91.176 of this chapter, or the following requirements are met:

* * * * *

(d) A pilot may begin the final approach segment of an instrument approach procedure other than a Category II or Category III procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if the airport is served by an operative ILS and an operative PAR, and both are used by the pilot. However, no pilot may continue an approach below the authorized DA/DH unless the requirements of § 91.175(l) or § 91.176 of this chapter, or the following requirements are met:

* * * * *

(e) A pilot may begin the final approach segment of an instrument approach procedure, or continue that approach procedure, at an airport when the visibility is reported to be less than the visibility minimums prescribed for that procedure if the pilot uses an operable EFVS in accordance with § 91.176 of this chapter and the certificate holder's operations specifications for EFVS operations.

* * * * *

■ 27. Effective March 13, 2018, amend § 121.651 by revising paragraphs (c) introductory text and (d) introductory text to read as follows:

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

* * * * *

(c) A pilot who has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section, and after that receives a later weather report indicating below-minimum conditions, may continue the approach to DA/DH or MDA. Upon reaching DA/DH or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DA/DH or MDA if either the requirements of § 91.176 of this chapter, or the following requirements are met:

* * * * *

(d) A pilot may begin the final approach segment of an instrument approach procedure other than a Category II or Category III procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if the airport is served by an operative ILS and an operative PAR, and both are used by the pilot. However, no pilot may continue an approach below the authorized DA/DH unless the requirements of § 91.176 of this chapter, or the following requirements are met:

* * * * *

■ 28. In appendix F to part 121, amend the Table by adding new entries III(c)(5), V(g), and V(h) to read as follows:

Appendix F to Part 121—Proficiency Check Requirements

* * * * *

Maneuvers/procedures	Required		Permitted			
	Simulated instrument conditions	Inflight	Visual simulator	Nonvisual simulator	Training device	Waiver provisions of § 121.441(d)
* * *	*		*	*		*
III. Instrument procedures:						
* * *	*		*	*		*
(c) ILS and other instrument approaches. There must be the following:						
* * *	*		*	*		*
(5) For each type of EFVS operation the certificate holder is authorized to conduct, at least one instrument approach must be made using an EFVS.	B	*B				
* * *	*		*	*		*
V. Landings and Approaches to Landings—						
* * *	*		*	*		*
(g) If the certificate holder is authorized to conduct EFVS operations to touchdown and rollout, at least one instrument approach to a landing must be made using an EFVS, including the use of enhanced flight vision from 100 feet above the touchdown zone elevation to touchdown and rollout	B	*B				
(h) If the certificate holder is authorized to conduct EFVS operations to 100 feet above the touchdown zone elevation, at least one instrument approach to a landing must be made using an EFVS, including the transition from enhanced flight vision to natural vision at 100 feet above the touchdown zone elevation	B	*B				
* * *	*		*	*		*

■ 29. In appendix H to part 121, amend ''Level B Training and Checking Permitted'' by revising paragraph 3. to read as follows:

Appendix H to Part 121—Advanced Simulation

* * * * *

Level B

Training and Checking Permitted

* * * * *

3. Except for EFVS operations, landings in a proficiency check without the landing on the line requirements (§ 121.441).

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 30. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 31. Amend § 125.287 by adding paragraph (g) to read as follows:

§ 125.287 Initial and recurrent pilot testing requirements.

* * * * *

(g) If the certificate holder is authorized to conduct EFVS operations, the competency check in paragraph (b) of this section must include tasks appropriate to the EFVS operations the certificate holder is authorized to conduct.

■ 32. Revise § 125.325 to read as follows:

§ 125.325 Instrument approach procedures and IFR landing minimums.

Except as specified in §§ 91.175(l) or 91.176 of this chapter, no person may make an instrument approach at an airport except in accordance with IFR weather minimums and unless the type of instrument approach procedure to be used is listed in the certificate holder's operations specifications.

■ 33. Effective March 13, 2018, revise § 125.325 to read as follows:

§ 125.325 Instrument approach procedures and IFR landing minimums.

Except as specified in § 91.176 of this chapter, no person may make an

instrument approach at an airport except in accordance with IFR weather minimums and unless the type of instrument approach procedure to be used is listed in the certificate holder's operations specifications.

■ 34. Amend § 125.381 by revising paragraphs (a)(2), (b), and (c) introductory text, and adding paragraph (d) to read as follows:

§ 125.381 Takeoff and landing weather minimums: IFR.

(a) * * *

(2) Except as provided in paragraphs (c) and (d) of this section, land an airplane under IFR.

(b) Except as provided in paragraphs (c) and (d) of this section, no pilot may execute an instrument approach procedure if the latest reported visibility is less than the landing minimums specified in the certificate holder's operations specifications.

(c) A pilot who initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions are below the minimum requirements, may continue the approach only if the requirements of § 91.175(l) or § 91.176 of this chapter, or both of the following conditions are met—

* * * * *

(d) A pilot may execute an instrument approach procedure, or continue the approach, at an airport when the visibility is reported to be less than the visibility minimums prescribed for that procedure if the pilot uses an operable EFVS in accordance with § 91.176 of this chapter and the certificate holder's operations specifications for EFVS operations, or for a holder of a part 125 letter of deviation authority, a letter of authorization for the use of EFVS.

■ 35. Effective March 13, 2018, amend § 125.381 by revising paragraph (c) introductory text to read as follows:

§ 125.381 Takeoff and landing weather minimums: IFR.

* * * * *

(c) A pilot who initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions are below the minimum requirements, may continue the approach only if either the requirements of § 91.176 of this chapter, or the following conditions are met—

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 36. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Public Law 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 37. Amend § 135.225 as follows:
■ a. Revise paragraphs (a) introductory text and (b) introductory text;
■ b. Remove paragraph (d);
■ c. Redesignate paragraph (c) as paragraph (d) and revise it;
■ d. Add new paragraph (c); and
■ e. Add paragraph (j).

The revisions and additions read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

(a) Except to the extent permitted by paragraphs (b) and (j) of this section, no pilot may begin an instrument approach procedure to an airport unless—

(b) A pilot conducting an eligible on-demand operation may begin and conduct an instrument approach procedure to an airport that does not have a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator if—

* * * * *

(c) Except as provided in paragraph (j) of this section, no pilot may begin the final approach segment of an instrument approach procedure to an airport unless the latest weather reported by the facility described in paragraph (a)(1) of this section indicates that weather conditions are at or above the authorized IFR landing minimums for that procedure.

(d) A pilot who has begun the final approach segment of an instrument approach to an airport under paragraph (c) of this section, and receives a later weather report indicating that conditions have worsened to below the minimum requirements, may continue the approach only if the requirements of § 91.175(l) of this chapter, paragraph (j) of this section, or both of the following conditions are met—

(1) The later weather report is received when the aircraft is in one of the following approach phases:

(i) The aircraft is on an ILS final approach and has passed the final approach fix;

(ii) The aircraft is on an ASR or PAR final approach and has been turned over to the final approach controller; or

(iii) The aircraft is on a non-precision final approach and the aircraft—

(A) Has passed the appropriate facility or final approach fix; or

(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and

(2) The pilot in command finds, on reaching the authorized MDA or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

* * * * *

(j) A pilot may begin an instrument approach procedure, or continue an approach, at an airport when the visibility is reported to be less than the visibility minimums prescribed for that procedure if the pilot uses an operable EFVS in accordance with § 91.176 of this chapter and the certificate holder's operations specifications for EFVS operations.

■ 38. Effective March 13, 2018, amend § 135.225 by revising paragraph (d) introductory text to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

* * * * *

(d) Except as provided in paragraph (j) of this section, a pilot who has begun the final approach segment of an instrument approach to an airport under paragraph (c) of this section, and receives a later weather report indicating that conditions have worsened to below the minimum requirements, may continue the approach only if the following conditions are met—

* * * * *

■ 39. Amend § 135.293 by adding paragraph (i) to read as follows:

§ 135.293 Initial and recurrent pilot testing requirements.

* * * * *

(i) If the certificate holder is authorized to conduct EFVS operations, the competency check in paragraph (b) of this section must include tasks appropriate to the EFVS operations the certificate holder is authorized to conduct.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on November 7, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–28714 Filed 12–12–16; 8:45 am]

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FEDERAL REGISTER

Vol. 81 Tuesday,

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Part V

The President

Executive Order 13752—Relating to the Implementation of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

Presidential Determination No. 2017–05 of December 8, 2016—Presidential Determination and Waiver Pursuant to Section 2249a of Title 10, United States Code, and Sections 40 and 40A of the Arms Export Control Act To Support U.S. Special Operations To Combat Terrorism in Syria

Federal Register
Vol. 81, No. 239
Tuesday, December 13, 2016

Presidential Documents

Title 3—

The President

Executive Order 13752 of December 8, 2016

Relating to the Implementation of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

The United States of America deposited its instrument of ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention) on September 7, 2016. The Convention will enter into force for the United States on January 1, 2017. Article 4 of the Convention imposes upon States Parties an obligation to designate a ''Central Authority'' for the purpose of discharging certain specified functions.

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. *Designation of Central Authority.* The Department of Health and Human Services is hereby designated as the Central Authority of the United States for purposes of the Convention. The Secretary of Health and Human Services is hereby authorized and empowered, in accordance with such regulations as the Secretary may prescribe, to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority in a timely and efficient manner.

Sec. 2. *Designation of State IV–D Child Support Agencies.* The Central Authority may designate the State agencies responsible for implementing an approved State Plan under title IV–D of the Social Security Act, 42 U.S.C. 651 *et seq.,* as public bodies authorized to perform specific functions in relation to applications under the Convention.

Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
December 8, 2016.

[FR Doc. 2016–30101
Filed 12–12–16; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Presidential Determination No. 2017–05 of December 8, 2016

Presidential Determination and Waiver Pursuant to Section 2249a of Title 10, United States Code, and Sections 40 and 40A of the Arms Export Control Act to Support U.S. Special Operations to Combat Terrorism in Syria

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 2249a of title 10, United States Code, sections 40 and 40A of the Arms Export Control Act (AECA) (22 U.S.C. 2780 and 2781), and section 301 of title 3, United States Code, I hereby:

• determine that the transaction, encompassing the provision of defense articles and services to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing U.S. military operations to counter terrorism in Syria, is essential to the national security interests of the United States;

• waive the prohibitions in sections 40 and 40A of the AECA related to such a transaction;

• delegate to the Secretary of State the responsibility under section 40(g)(2) of the AECA to consult with and submit reports to the Congress for proposed exports, 15 days prior to authorizing them to proceed, that are necessary for and within the scope of this waiver determination and the transaction referred to herein;

• waive the prohibitions in section 2249a of title 10, United States Code, to the extent necessary to allow the Department of Defense to carry out such support; and

• delegate to the Secretary of Defense the responsibility under section 2249a(b)(2) of title 10, United States Code, to notify the appropriate congressional committees at least 15 days before this waiver takes effect.

The Secretary of Defense is authorized and directed to publish this determination in the *Federal Register.*

THE WHITE HOUSE,
Washington, December 8, 2016

[FR Doc. 2016–30107
Filed 12–12–16; 11:15 am]
Billing code 5001–06–P

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Federal Register

Vol. 81, No. 239

Tuesday, December 13, 2016

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

86555–86904	1
86905–87408	2
87409–87800	5
87801–88096	6
88097–88608	7
88609–88972	8
88973–89356	9
89357–89830	12
89831–90184	13

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

9547	87397
9548	87399
9549	87401
9550	88605
9551	89355

Executive Orders:

13749	87391
13750	87393
13751	88609
13752	90181

Orders:

Order of December 2, 2016	88607

Administrative Orders:

Presidential Determinations:

Presidential Determination 2017–03 of December 1, 2016	88973
Presidential Determination 2017–05 of December 8, 2016	90183

5 CFR

250	89357
330	86555
532	86561
731	86555
890	86905
894	86905
9801	86563

Proposed Rules:

890	86898, 86902

6 CFR

Proposed Rules:

5	88635

7 CFR

6	87801
271	89831
272	89831
273	89831
274	89831
278	89831
944	87409
980	87409
999	87409

Proposed Rules:

33	87486
35	87486
271	86614
272	86614
273	86614
944	87849
980	87849
999	87849
1150	89878
1160	89878
1205	89878
1206	89878
1207	89878
1208	89878
1209	89878
1210	89878
1212	89878
1214	89878
1215	89878
1216	89878
1217	89878
1218	89878
1219	89878
1222	89878
1230	89878
1250	89878
1260	89878

10 CFR

2	86906
10	86906
26	86906
30	86906
40	86906
50	86906, 88615
55	86906
61	86906
63	86906
70	86906
71	86906
72	86906, 88097
73	86906
74	86906
100	86906
429	88098, 89276, 89806, 90072
430	89806, 90072
431	88098, 89276

Proposed Rules:

50	89011
205	88136
430	87493

12 CFR

370	87734
602	88975
701	88412

14 CFR

1	90126
23	89843, 90126
25	86910, 88098, 90126
27	90126
29	88616, 90126
39	86567, 86912, 87412, 87417, 87419, 87422, 88619, 88621, 88623, 89367, 89371, 89373
61	90126
71	86570, 87802
91	90126
121	90126

125.....90126
135.....90126

Proposed Rules:
39 .....86627, 86630, 86975, 86977, 87494, 87496, 87499, 88143, 88145, 89397, 89878, 89881
71 .....86633, 87856, 89012, 89399, 89401, 89885

15 CFR

730.....87424
740.....86571
747.....87424
748.....87424, 87426
762.....87424
774.....87424
902.....88975
922.....87803
2004.....89846

Proposed Rules:
923.....89887

16 CFR

306.....86914

Proposed Rules:
315.....88526
1241.....89888

18 CFR

35.....87770
375.....86573
388.....86573
1301.....88998

19 CFR

12.....87804, 87805
159.....89375
173.....89375
201.....86575

20 CFR

404.....86915, 86928

Proposed Rules:
295.....89014
401.....86979

21 CFR

1.....88099
20.....89848
201.....89848
207.....89848
314.....89848
514.....89848
515.....89848
601.....89848
607.....89848
882.....87810
1271.....89848

Proposed Rules:
1310.....89402

22 CFR

41.....88101
120.....87427
121.....87427
122.....87427
124.....87427
126.....87427
127.....87427

23 CFR

630.....86924
635.....86924

Proposed Rules:
655.....89888

24 CFR

5.....87812
91 .....86947, 87812, 89381
92 .....86947, 87812, 89381
93.....87812
100.....88627
200.....87812
247.....87812
574.....87812
576.....87812
578.....87812
880.....87812
882.....87812
883.....87812
884.....87812
886.....87812
891.....87812
905.....87812
960.....87812
965.....87430
966.....87430, 87812
982.....87812
983.....87812

25 CFR

140.....86953
141.....86953
211.....86953
213.....86953
225.....86953
226.....86953
227.....86953
243.....86953
249.....86953

Proposed Rules:
15.....87501
140.....89015

26 CFR

1 .....86953, 87444, 88103, 88806, 88882, 88999, 89849
300.....86955
301.....89004, 89849
602.....87444, 88806

Proposed Rules:
1 .....87502, 88562, 88854
57.....89017, 89020
301.....89022

27 CFR

Proposed Rules:
9.....86980

28 CFR

36.....87348

Proposed Rules:
50.....89023

29 CFR

38.....87130, 88110

Proposed Rules:
1904.....86987
1910.....86987, 88147
1915.....86987
1926.....86987

31 CFR

22.....89852
50.....88592, 88600
1010.....86577

32 CFR

208.....87448

Proposed Rules:
175.....88167

33 CFR

100.....87454
117 .....86579, 87454, 87455, 87812, 89007, 89382, 89861, 89862
165 .....87813, 88110, 88112, 88115, 89862, 89865

34 CFR

200.....88886, 88940

37 CFR

2.....89382
370.....89867
380.....87455

Proposed Rules:
201 .....86634, 86643, 86656
202 .....86634, 86643, 86656

38 CFR

17.....88117, 89383

39 CFR

3015.....88120
3060.....88120

40 CFR

52 .....87815, 87817, 87819, 88124, 89007, 89008, 89391, 89868
80.....89746
81.....89870
82.....86778
98.....89188
122.....89320
180 .....86579, 86580, 86960, 87456, 87463, 88627
228.....87820
435.....88126
770.....89674

Proposed Rules:
49.....86988
52 .....86662, 86664, 87503, 87857, 88636, 89024, 89407, 89889
55.....89418
63.....87003, 89026
81.....86664
97.....89035
152.....87509
153.....87509
155.....87509
156.....87509
160.....87509
165.....87509
168.....87509
170.....87509
172.....87509
180.....89036

42 CFR

1001.....88368
1003.....88334, 88338
1005.....88334

43 CFR

1600.....89580
3100.....88634
3170.....88634

Proposed Rules:
30.....87501
49.....88173
8360.....88173

44 CFR

64.....87467, 87470

45 CFR

75.....89393
1302.....87843

Proposed Rules:
5.....88637

47 CFR

1.....86586
25.....86586
64.....87274
73.....86586
74.....86586

Proposed Rules:
2.....89890
54.....87861
73.....89424, 89890
90.....89890

48 CFR

Proposed Rules:
2.....88072
4.....88072
7.....88072
8.....88072
9.....88072
10.....88072
13.....88072
15.....88072
16.....88072
19.....88072
42.....88072
52.....88072
1816.....89038
1852.....89038

49 CFR

207.....88127
225.....88133
380.....88732
382.....87686
383.....87686, 88732
384.....87686, 88732
391.....87686
1250.....87472

Proposed Rules:
172.....87510
175.....87510
236.....88006
238.....88006
390.....86673
391.....86673
571.....86684

50 CFR

300.....86966, 88975
600.....88975
622 .....86970, 86971, 86973, 88135, 89876
648 .....87844, 89010, 89396
660.....87845

Proposed Rules:
17.....87246, 87529
27.....88173
224.....88639
648.....86687, 87862
679.....87863, 87881

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 2028/P.L. 114–254
Further Continuing and Security Assistance Appropriations Act, 2017 (Dec. 10, 2016; 130 Stat. 1005)
Last List December 12, 2016

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