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Rules and Regulations

Federal Register
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Friday, June 2, 2017

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 134

RIN 3245–AG82

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending the rules of practice of its Office of Hearings and Appeals (OHA) to implement section 869 of the National Defense Authorization Act for Fiscal Year 2016 and section 1833 of the National Defense Authorization Act for Fiscal Year 2017. This legislation authorizes OHA to decide Petitions for Reconsideration of Size Standards (Size Standard Petitions or Petitions). This rule also revises the rules of practice for OHA appeals of agency employee disputes.

DATES:

Effective Date: This rule is effective on July 3, 2017.

Applicability Date: Size Standard Petitions pertaining to size standards revised, modified, or established in a final rule published during the interval between November 25, 2015, and July 3, 2017 shall be considered timely if filed within 30 calendar days of the latter date.

FOR FURTHER INFORMATION CONTACT: Linda (Lin) DiGiandomenico, Attorney Advisor, at (202) 401–8206 or *OHA@sba.gov.*

SUPPLEMENTARY INFORMATION: This rule amends the rules of practice for the SBA's Office of Hearings and Appeals (OHA) in order to implement section 869(b) of the National Defense Authorization Act for Fiscal Year 2016, Public Law 114–92, 129 Stat. 726, November 25, 2015 (NDAA 2016). This legislation added new paragraph 3(a)(9) to the Small Business Act, 15 U.S.C. 632(a)(9), to authorize OHA to hear and decide Petitions for Reconsideration of Size Standards (Size Standard Petitions or Petitions). A Size Standard Petition may be filed at OHA after SBA publishes a final rule in the **Federal Register** to revise, modify, or establish a size standard. This rule creates a new subpart I in OHA's regulations (13 CFR part 134) to set out detailed rules of practice for Size Standard Petitions, revises OHA's general rules of practice in subparts A and B of part 134 as required by the new legislation, and amends SBA's small business size regulations (13 CFR part 121) to include Size Standard Petitions as part of SBA's process for establishing size standards.

This rule also revises the rules of practice for OHA appeals of agency employee disputes in subpart H of part 134, to comport with SBA's revisions of its Standard Operating Procedure (SOP) 37 71, The Employee Dispute Resolution Process.

On October 7, 2016, SBA published in the **Federal Register** (81 FR 69723), a proposed rule to implement section 869(b) of NDAA 2016 and to revise procedures for OHA appeals of agency employee disputes. The proposed rule provided a 60-day comment period, with comments due on December 6, 2016. During the comment period SBA received three comments, each of which concerned the implementation of section 869(b). No comments were received concerning employee disputes.

On December 23, 2016, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328 (NDAA 2017). Section 1833(b) of NDAA 2017 added new subparagraph 3(a)(9)(E) to the Small Business Act, 15 U.S.C. 632(a)(9)(E). This provision authorizes OHA to accept Size Standard Petitions after SBA issues rules or guidance for processing these cases; SBA is issuing those procedural rules today, in this final rule. Until this final rule, SBA had no specific rules or guidance for processing Size Standard Petitions, and thus OHA dismissed without prejudice the Size Standard Petitions that were filed. This new statutory provision also provides that Size Standard Petitions pertaining to size standards revised, modified, or established in a final rule published during the interval between November 25, 2015, and the effective date of this final rule will be considered timely if filed within 30 calendar days of that effective date.

Summary of Comments and SBA's Response

A. Part 121

SBA proposed adding new paragraphs (e), (f), and (g) to § 121.102 to include Size Standard Petitions as part of SBA's process for establishing size standards. New paragraph (e) requires SBA to include instructions for filing a Size Standard Petition in any final rule revising, modifying, or establishing a size standard. There were no comments on it and SBA is adopting it exactly as proposed.

New paragraph (f) requires SBA to publish a notice in the **Federal Register** within 14 calendar days after a Size Standard Petition is filed. SBA received one comment on proposed new § 121.102(f). The commenter requested that SBA also have an online tracking system, preferably on the Web site *regulations.gov,* for Size Standard Petitions filed at OHA. The same commenter also suggested that SBA include information on Size Standard Petitions in the record for the applicable revised, modified, or newly established size standard.

In response, SBA notes that OHA has no online tracking system as yet; however, systems already in place will enable the public to track Size Standard Petition cases. First, notices for **Federal Register** publication appear automatically on *federalregister.gov,* and the public may use that site's advanced search feature to locate them. Second, once issued, OHA's decisions are public and available at *sba.gov/oha/decisions.* Regarding the inclusion of information on Size Standard Petitions in the record for size standards rulemakings, SBA declines to add this requirement, leaving it up to SBA's Office of Size Standards to determine what to include in the rulemaking record for a particular rule. Thus, SBA is adopting the proposed § 121.102(f) as proposed, with one editorial change to the first sentence, where ''announcing a size standard'' is replaced with ''announcing the size standard''.

Proposed new paragraph (g) would require SBA to publish a document in the **Federal Register** where SBA grants a Petition for Reconsideration of a Size Standard that had been revised or

modified. There were no public comments on this provision. SBA is changing this provision to clarify that OHA will remand the case to SBA's Office of Size Standards for further action.

B. Part 134, Subparts A and B

SBA proposed to revise four sections contained in subparts A and B of part 134. These are §§ 134.101 (Definitions) and 134.102 (Jurisdiction of OHA) in subpart A; and §§ 134.201 (Scope of the rules in this subpart B) and 134.227 (Finality of decisions) in subpart B. SBA received no comments on any of these sections. SBA added a definition to clarify that Step One and Step Two refer to the Employee Dispute Resolution Process described in SBA Standard Operating Procedure, 37 71, as denoted in § 134.801(a). All other revisions are exactly as proposed.

C. Part 134, Subpart H

SBA proposed to revise §§ 134.801, 134.803, 134.804, 134.805, 134.807, 134.808, and 134.809 of subpart H. All of these sections concern OHA appeals of SBA employee disputes. SBA received no comments regarding the proposed revision of any of these sections, and is adopting these revisions exactly as proposed, with three minor changes. In § 134.805(d), the words ''at his or her home address'' are being removed as unnecessary since service is by email. In § 134.807(a), the words ''it wishes'' are being replaced with ''SBA wishes'' for clarity. In § 134.809(a), an official's title is being corrected.

D. Part 134, Subpart I

SBA proposed to add subpart I setting forth the rules of practice before OHA for Petitions for Reconsideration of Size Standards. SBA received no comments regarding the proposed new §§ 134.901 (Scope of the rules in this subpart I), 134.905 (Notice and order), 134.907 (Filing and service), 134.908 (The administrative record), 134.909 (Standard of review), 134.911 (Response to the Size Standard Petition), 134.912 (Discovery and oral hearings), 134.913 (New evidence), 134.914 (The decision), 134.915 (Remand), 134.917 (Equal Access to Justice Act), and 134.918 (Judicial review). SBA is adopting these new sections as proposed, with one minor change to the first sentence in § 134.914, where the second ''the'' is being deleted.

Proposed § 134.902 provides that any person ''adversely affected'' by a new, revised, or modified size standard has standing to file a Petition within 30 days from the date of publication of the final rule promulgating that size standard. Paragraph (b) provides that a business entity is not ''adversely affected'' unless it conducts business in the industry associated with the size standard being challenged, and it either qualified as a small business concern before the size standard was revised or modified, or it would qualify as a small business concern under the size standard as revised or modified.

SBA received two comments. One comment supported the proposed rule because it precludes businesses that are large under both the existing and the modified or revised size standard from filing Size Standard Petitions. The second comment opposed the proposed rule for that same reason, asserting that the statute does not limit the availability of an OHA review only to small or would-be small businesses, but was meant to include all adversely-affected businesses, including large businesses. The second commenter believes that it is adversely affected by a change in a size standard that favors its competitors, and asserts that concerns also should be able to request review on SBA's decision in a rulemaking not to modify or revise a size standard, but to keep it the same.

SBA disagrees with the second comment. The statute provides that SBA's OHA, in deciding Size Standard Petitions, ''shall use the same process it uses to decide challenges to the size of a small business concern.'' Small Business Act section 3(a)(9)(C), 15 U.S.C. 632(a)(9)(C). A challenge to a concern's small business size status, also called a size protest, occurs when a competitive procurement or order has been restricted to or reserved for small businesses or a particular group of small businesses. The size protest, filed by either a disappointed offeror or the Government, is initially decided by an SBA Area Office in a size determination which may be appealed to OHA. At both the protest (Area Office) and the appeal (OHA) stages, the process of deciding challenges to a concern's small business size status requires a non-Government person bringing the challenge to have standing as a small business offeror remaining in the competition and still eligible for award. See 13 CFR 121.1001(a)(1) (''Any offeror whom the contracting officer has not eliminated for reasons unrelated to size''), 13 CFR 134.302(a) (''Appeals from size determinations . . . may be filed with OHA by the following, as applicable: Any person adversely affected by a size determination . . . .''); *Size Appeal of Straughan Environmental, Inc.,* SBA No. SIZ–5767, at 3 (2016), available at *www.sba.gov/oha.* Because the statute requires OHA to follow the process used in size challenges, and under the process used in size challenges only a small business has standing to file either a size protest or a size appeal, SBA believes it was the intent of Congress to allow only a small business to file a Size Standard Petition. Therefore, SBA is adopting new § 134.902 exactly as proposed.

Section 134.903(a) reiterates the statutory 30-day deadline for filing a Petition, requires dismissal of an untimely Petition, and clarifies that the days counted are calendar days. Section 134.903(b) requires dismissal as premature a Petition filed in response to a proposed rule. The retention of an existing size standard is not considered to be the revision, modification, or establishment of a size standard and is not subject to these procedures, and so § 134.903(c) requires OHA to dismiss a petition challenging the retention of an existing size standard.

There were two comments. One comment expressed support for the 30-day deadline and summary dismissal provisions. The second comment requested a process whereby one may comment on and request a review of a size standard change at any time, not just within 30 days of the change, so long as the change has produced a negative financial impact on businesses. SBA notes, with respect to the second comment, that the 30-day deadline for filing a Petition is statutory and thus SBA may not change it. As for opportunities to comment on size standards, there is a public comment period each time SBA publishes a proposed rule, and during this public comment period any person may submit a comment for SBA to consider and address in formulating the final rule. During the public comment period, commenters need not demonstrate standing, and may comment on any size standard being proposed, regardless of whether the proposed rule would modify or revise that size standard. Outside of public comment periods, persons may address their concerns about any size standard at any time to SBA's Size Standards Office pursuant to § 121.102(d). SBA is adopting new § 134.903 exactly as proposed.

Section 134.904 sets out the requirements for a Size Standard Petition. Among these, the Petition must include any public comments the Petitioner had submitted during the rulemaking on the challenged size standard, and the Petitioner also must demonstrate standing for each challenged size standard. One commenter suggested an additional requirement, that the Petitioner must actually have submitted a public

comment during the rulemaking. The same commenter also noted its support for the requirement to demonstrate standing for each challenged size standard. SBA disagrees with the suggestion to require the Petitioner to have submitted a public comment during the rulemaking, because this additional requirement would be overly restrictive. Thus, SBA is adopting new § 134.904 as proposed, with the deletion of the unnecessary mail code in § 134.904(d)(1).

Section 134.906 permits interested persons with a direct stake in the outcome of the case to intervene and obtain a copy of the Petition, under a protective order if necessary. One commenter requested SBA to change this provision to require potential intervenors to meet the same standing requirement as petitioners, in order to prevent large businesses from having a ''back door'' into the size standard review process. SBA disagrees with this comment. The proposed rule requires only ''a direct stake in the outcome'' and the OHA Judge will make that determination on a case-by-case basis. SBA is adopting new § 134.906 exactly as proposed.

Section 134.910 requires OHA to dismiss a Petition under four scenarios. One commenter stated support for dismissal under those scenarios. SBA is adopting new § 134.910 exactly as proposed.

Section 134.916 sets out the effects of OHA's decision in a Size Standard Petition case. Paragraph (a) provides that if the challenged size standard is a modified or revised size standard, and OHA grants the Size Standard Petition, SBA will rescind the challenged size standard and restore the prior size standard, which will remain in effect until SBA issues a new size standard. If the challenged size standard is newly established, and OHA grants the Size Standard Petition, the challenged size standard remains in effect. Paragraph (b) provides that if OHA denies a Size Standard Petition, the challenged size standard remains in effect.

One commenter requested clarification of the effect that OHA's grant of a Size Standard Petition would have on procurement actions. The commenter posed the hypothetical of a concern that is a small business under the revised size standard but is not a small business under the prior size standard. The concern self-certifies as small under the revised size standard with its initial offer including price. Later, OHA grants a Size Standard Petition and SBA rescinds the revised size standard, restoring the prior size standard, under which that concern is not a small business. Would contract award to that concern as a small business be valid even though the prior size standard has been restored?

SBA responds to this comment by stating that the contract award to that concern as a small business is valid despite SBA's rescission of the revised, higher size standard. This result is consistent with the general rule, stated in § 121.404(a), that a concern's small business eligibility is determined on the self-certification date and is based on the size standard in effect at that time. Thus, the procuring agency may count the award toward its small business goals. On the other hand, if the procuring agency amends the solicitation and requires new self-certifications, those self-certifications will be based on the size standard in effect on the day they are made. SBA is revising the text of § 134.916(a) to clarify the intended effect of an OHA decision granting a Size Standard Petition in light of this public comment, and also to provide that, on remand, SBA may take any appropriate action to rescind the challenged revised or modified size standard.

Compliance With Executive Orders 12866, 12988, 13175 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule does not constitute a ''significant regulatory action'' under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800. This rule establishes the procedures for Petitions for Reconsideration of Size Standards at SBA's Office of Hearings and Appeals (OHA) and revises procedural rules at OHA for agency employee disputes. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13175

For the purposes of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, SBA has determined that this final rule will not 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. Therefore, SBA determines that this final rule does not require consultations with tribal officials or warrant the publication of a Tribal Summary Impact Statement.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. 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, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This final rule revises the regulations governing cases before SBA's Office of Hearings and Appeals (OHA), SBA's administrative tribunal. These

regulations are procedural by nature. Specifically, the final rule establishes rules of practice for Petitions for Reconsideration of Size Standards (Size Standard Petitions), a new type of administrative litigation mandated by 869(b) of the National Defense Authorization Act for Fiscal Year 2016. This legislation provides a new statutory right to challenge a size standard revised, modified, or established by the SBA through a final rule. Further, this legislation requires OHA to hear any Size Standard Petitions that are filed. This final rule merely provides the rules of practice for the orderly hearing and disposition of Size Standard Petitions at OHA. While SBA did not anticipate that this final rule would have a significant economic impact on any small business, we did request comments from any small business setting out how and to what degree this final rule would affect it economically. No comments were received regarding RFA issues.

The Small Business Size Regulations provide that persons requesting to change existing size standards or to establish new size standards may address these requests to SBA's Office of Size Standards. 13 CFR 121.102(d). Over the past five years, fewer than ten letters concerning size standards have been submitted per year, supporting SBA's belief that this final rule will not affect a substantial number of small entities. Further, a business adversely affected by a final rule revising a size standard has always had (and would continue to have) the option of judicial review in Federal court, yet the SBA knows of no such lawsuit ever having been filed.

In addition to establishing rules of practice for Size Standard Petitions, this rule revises OHA's rules of practice for SBA Employee Disputes. This rulemaking is procedural, would impose no significant additional requirements on small entities, and would have minimal, if any, effect on small entities.

Therefore, the Administrator of SBA certifies under 5 U.S.C. 605(b) that this final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions (government agencies).

For the reasons stated in the preamble, the U.S. Small Business Administration amends 13 CFR parts 121 and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. Amend § 121.102 by adding paragraphs (e), (f), and (g) to read as follows:

§ 121.102 How does SBA establish size standards?

* * * * *

(e) When SBA publishes a final rule in the **Federal Register** revising, modifying, or establishing a size standard, SBA will include in the final rule, an instruction that interested persons may file a petition for reconsideration of a revised, modified, or established size standard at SBA's Office of Hearings and Appeals (OHA) within 30 calendar days after publication of the final rule in accordance with 15 U.S.C. 632(a)(9) and part 134, subpart I of this chapter. The instruction will provide the mailing address, facsimile number, and email address of OHA.

(f) Within 14 calendar days after a petition for reconsideration of a size standard is filed, unless it appears OHA will dismiss the petition for reconsideration, SBA will publish a document in the **Federal Register** announcing the size standard or standards that have been challenged, the **Federal Register** citation of the final rule, the assigned OHA docket number, and the date of the close of record. The document will further state that interested parties may contact OHA to intervene in the dispute pursuant to § 134.906 of this chapter.

(g) Where OHA grants a petition for reconsideration of a size standard that had been revised or modified, OHA will remand the case to SBA's Office of Size Standards for further action in accordance with § 134.916(a) of this chapter.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 3. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

■ 4. Amend § 134.101 by revising the definitions of ''AA/OHA'' and ''Judge'' and adding definitions for ''Administrative Judge'', ''Petitioner'', ''Size Standard Petition'', and ''Step One and Step Two'' in alphabetical order to read as follows:

§ 134.101 Definitions.

* * * * *

AA/OHA means the Assistant Administrator for OHA, who is also the Chief Hearing Officer.

* * * * *

Administrative Judge means a Hearing Officer, as described at 15 U.S.C. 634(i), appointed by OHA to adjudicate cases.

* * * * *

Judge means the Administrative Judge or Administrative Law Judge who decides an appeal or petition brought before OHA, or the AA/OHA when he or she acts as an Administrative Judge.

* * * * *

Petitioner means the person who initially files a petition before OHA.

* * * * *

Size Standard Petition means a petition for reconsideration of a revised, modified, or established size standard filed with OHA pursuant to 15 U.S.C. 632(a)(9) and subpart I of this part.

Step One and *Step Two* refer to the steps of the Employee Dispute Resolution Process, see § 134.801(a) for more information.

■ 5. Amend § 134.102 by revising paragraphs (r) and (t) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(r) Appeals from SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure (SOP) 37 71 (available at *http://www.sba.gov/tools/resourcelibrary/sops/index.html* or through OHA's Web site *http://www.sba.gov/oha*) and subpart H of this part;

* * * * *

(t) Petitions for reconsideration of revised, modified, or established size standards pursuant to 15 U.S.C. 632(a)(9).

■ 6. Amend § 134.201 by:

■ a. Removing the word ''and'' in paragraph (b)(6);

■ b. Redesignating paragraph (b)(7) as paragraph (b)(8); and

■ c. Adding a new paragraph (b)(7).

The addition reads as follows:

§ 134.201 Scope of the rules in this subpart B.

* * * * *

(b) * * *

(7) For Size Standard Petitions, in subpart I of this part (§§ 134.901 *through* 134.918); and

* * * * *

■ 7. Amend § 134.227 by:

■ a. Removing the word ''and'' in paragraph (b)(3);

■ b. Redesignating paragraph (b)(4) as paragraph (b)(5); and

■ c. Adding a new paragraph (b)(4).

The addition reads as follows:

§ 134.227 Finality of decisions.

* * * * *

(b) * * *

(4) Size Standard Petitions; and

* * * * *

§ 134.801 [Amended]

■ 8. Amend § 134.801 by:

■ a. Adding the word ''and'' at the end of paragraph (b)(9);

■ b. Removing ''; and'' at the end of paragraph (b)(10) and adding a period in its place; and

■ c. Removing paragraph (b)(11).

■ 9. Amend § 134.803 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 134.803 Commencement of appeals from SBA Employee Dispute Resolution Process cases (Employee Disputes).

(a) An appeal from a Step Two decision must be commenced by filing an appeal petition within 15 calendar days from the date the Employee receives the Step Two decision.

(b) If the Step Two Official does not issue a decision within 15 calendar days of receiving the SBA Dispute Form from the Employee, the Employee must file his/her appeal petition at OHA no later than 15 calendar days from the date the Step Two decision was due.

* * * * *

■ 10. Amend § 134.804 by:

■ a. Revising paragraphs (a)(1), (2), and (3);

■ b. Adding the word ''and'' after the semicolon in paragraph (a)(5);

■ c. Removing paragraph (a)(6);

■ d. Redesignating paragraph (a)(7) as paragraph (a)(6);

■ e. Revising paragraph (b)(1);

■ f. Removing paragraph (c); and

■ g. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

The revisions read as follows:

§ 134.804 The appeal petition.

(a) * * *

(1) The completed SBA Dispute Form;

(2) A copy of the Step One and Step Two decisions, if any;

(3) Statement of why the Step Two decision (or Step One decision, if no Step Two decision was received), is alleged to be in error;

* * * * *

(b) * * *

(1) The Step Two Official;

* * * * *

§ 134.805 [Amended]

■ 11. Amend § 134.805 in paragraph (d) by removing the words ''U.S. Mail'' and adding in their place the word ''email'' and removing the words ''at his or her home address''.

§ 134.807 [Amended]

■ 12. Amend § 134.807 as follows:

■ a. By removing from paragraph (a), the words ''a copy of the Dispute File'' and adding in their place the words ''any documentation, not already filed by the Employee, that SBA wishes OHA to consider'';

■ b. By removing from paragraph (b), the words ''15 days'' and ''45 days'' and adding in both their places the words ''15 calendar days''; and

■ c. By removing from paragraph (c), the words ''and the Dispute File are normally the last submissions'' and by adding in their place the words ''is normally the last submission''.

§ 134.808 [Amended]

■ 13. Amend § 134.808(a) by removing the word ''AMO's'' and adding in its place the words ''Step One or Step Two''.

■ 14. Revise § 134.809 to read as follows:

§ 134.809 Review of initial decision.

(a) If the Chief Human Capital Officer, General Counsel for SBA, or Counsel to the Inspector General (IG) believes OHA's decision is contrary to law, rule, regulation, or SBA policy, that official may file a Petition for Review (PFR) of the decision with the Deputy Administrator (or IG for disputes by OIG employees) for a final SBA Decision. Only the Chief Human Capital Officer, General Counsel, or Counsel to the IG may file a PFR of an OHA decision; the Employee may not.

(b) To file a PFR, the official must request a complete copy of the dispute file from the Assistant Administrator for OHA (AA/OHA) within five calendar days of receiving the decision. The AA/OHA will provide a copy of the dispute file to the official, the Employee, and the Employee's representative within five calendar days of the official's request. The official's PFR is due no later than 15 calendar days from the date the official receives the dispute file. The PFR must specify the objections to OHA's decision.

■ 15. Add subpart I to read as follows:

Subpart I—Rules of Practice for Petitions for Reconsideration of Size Standards

Sec.

Subpart I—Rules of Practice for Petitions for Reconsideration of Size Standards

§ 134.901 Scope of the rules in this subpart.

(a) The rules of practice in this subpart apply to Size Standard Petitions.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to Size Standard Petitions listed in paragraph (a) of this section.

§ 134.902 Standing.

(a) A Size Standard Petition may be filed with OHA by any person that is adversely affected by the Administrator's decision to revise, modify, or establish a size standard.

(b) A business entity is not adversely affected unless it conducts business in the industry associated with the size standard that is being challenged and:

(1) The business entity qualified as a small business concern before the size standard was revised or modified; or

(2) The business entity qualifies as a small business under the size standard as revised or modified.

§ 134.903 Commencement of cases.

(a) A Size Standard Petition must be filed at OHA not later than 30 calendar days after the publication in the **Federal Register** of the final rule that revises, modifies, or establishes the challenged size standard. An untimely Size Standard Petition will be dismissed.

(b) A Size Standard Petition filed in response to a notice of proposed rulemaking is premature and will be dismissed.

(c) A Size Standard Petition challenging a size standard that has not been revised, modified, or established through publication in the **Federal Register** will be dismissed.

§ 134.904 Requirements for the Size Standard Petition.

(a) *Form.* There is no required form for a Size Standard Petition. However, it must include the following information:

(1) A copy of the final rule published in the **Federal Register** to revise, modify, or establish a size standard, or an electronic link to the final rule;

(2) A full and specific statement as to which size standard(s) in the final rule the Petitioner is challenging and why the process that was used to revise, modify, or establish each challenged size standard is alleged to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, together with argument supporting such allegation;

(3) A copy of any comments the Petitioner submitted in response to the proposed notice of rulemaking that pertained to the size standard(s) in question, or a statement that no such comments were submitted; and

(4) The name, mailing address, telephone number, facsimile number, email address, and signature of the Petitioner or its attorney.

(b) *Multiple size standards.* A Petitioner may challenge multiple size standards that were revised, modified, or established in the same final rule in a single Size Standard Petition, provided that the Petitioner demonstrates standing for each of the challenged size standards.

(c) *Format.* The formatting provisions of § 134.203(d) apply to Size Standard Petitions.

(d) *Service.* In addition to filing the Size Standard Petition at OHA, the Petitioner must serve a copy of the Size Standard Petition upon each of the following:

(1) SBA's Office of Size Standards, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; facsimile number (202) 205–6390; or *sizestandards@sba.gov;* and

(2) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; facsimile number (202) 205–6873; or *OPLService@sba.gov.*

(e) *Certificate of service.* The Petitioner must attach to the Size Standard Petition a signed certificate of service meeting the requirements of § 134.204(d).

§ 134.905 Notice and order.

Upon receipt of a Size Standard Petition, OHA will assign the matter to a Judge in accordance with § 134.218. Unless it appears that the Size Standard Petition will be dismissed under § 134.910, the presiding Judge will issue a notice and order initiating the publication required by § 121.102(f) of this chapter; specifying a date for the Office of Size Standards to transmit to OHA a copy of the administrative record supporting the revision, modification, or establishment of the challenged size standard(s); and establishing a date for the close of record. Typically, the administrative record will be due seven calendar days after issuance of the notice and order, and the record will close 45 calendar days from the date of OHA's receipt of the Size Standard Petition.

§ 134.906 Intervention.

In accordance with § 134.210(b), interested persons with a direct stake in the outcome of the case may contact OHA to intervene in the proceeding and obtain a copy of the Size Standard Petition. In the event that the Size Standard Petition contains confidential information and the intervener is not a governmental entity, the Judge may require that the intervener's attorney be admitted to a protective order before obtaining a complete copy of the Size Standard Petition.

§ 134.907 Filing and service.

The provisions of § 134.204 apply to the filing and service of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

§ 134.908 The administrative record.

The Office of Size Standards will transmit to OHA a copy of the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard by the date specified in the notice and order. The Chief, Office of Size Standards, will certify and authenticate that the administrative record, to the best of his or her knowledge, is complete and correct. The Petitioner and any interveners may, upon request, review the administrative record submitted to OHA. The administrative record will include the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard.

§ 134.909 Standard of review.

The standard of review for deciding a Size Standard Petition is whether the process employed by the Administrator to revise, modify, or establish the size standard was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. OHA will not adjudicate arguments that a different size standard should have been selected. The Petitioner bears the burden of proof.

§ 134.910 Dismissal.

The Judge must dismiss the Size Standard Petition if:

(a) The Size Standard Petition does not, on its face, allege specific facts that if proven to be true, warrant remand of the size standard;

(b) The Petitioner is not adversely affected by the final rule revising, modifying, or establishing a size standard;

(c) The Size Standard Petition is untimely or premature pursuant to § 134.903 or is not otherwise filed in accordance with the requirements in subparts A and B of this part; or

(d) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters.

§ 134.911 Response to the Size Standard Petition.

Although not required, any intervener may file and serve a response supporting or opposing the Size Standard Petition at any time prior to the close of record. SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first. The response must present argument.

§ 134.912 Discovery and oral hearings.

Discovery will not be permitted. Oral hearings will not be held unless the Judge determines that the dispute cannot be resolved except by the taking of live testimony and the confrontation of witnesses.

§ 134.913 New evidence.

Disputes under this subpart ordinarily will be decided based on the pleadings and the administrative record. The Judge may admit additional evidence upon a motion establishing good cause.

§ 134.914 The decision.

The Judge will issue his or her decision within 45 calendar days after close of record, as practicable. The Judge's decision is final and will not be reconsidered.

§ 134.915 Remand.

If OHA grants a Size Standard Petition, OHA will remand the matter to the Office of Size Standards for further analysis. Once remanded, OHA no

longer has jurisdiction over the matter unless a new Size Standard Petition is filed as a result of a new final rule published in the **Federal Register**.

§ 134.916 Effects of OHA's decision.

(a) If OHA grants a Size Standard Petition of a modified or revised size standard, SBA will take appropriate action to rescind that size standard and to restore the one that was in effect before the one challenged in the Size Standard Petition. The restored size standard will remain in effect until SBA issues a new size standard. The OHA decision does not affect the validity of a concern's size representation made under the challenged size standard prior to the effective date of the SBA action rescinding that challenged size standard. Such a concern remains eligible for award as a small business, and the procuring agency may count the award towards its small business goals. If the procuring agency amends the solicitation and requires new self-certifications, those self-certifications will be based on the size standard in effect on the day those self-certifications are made. If the size standard in question was newly established, the challenged size standard remains in effect while SBA conducts its further analysis on remand.

(b) If OHA denies a Size Standard Petition, the size standard remains as published in the Code of Federal Regulations.

§ 134.917 Equal Access to Justice Act.

A prevailing Petitioner is not entitled to recover attorney's fees. Size Standard Petitions are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

§ 134.918 Judicial review.

The publication of a final rule in the **Federal Register** is considered the final agency action for purposes of seeking judicial review.

Dated: May 11, 2017.

Linda E. McMahon,

Administrator.

[FR Doc. 2017–10471 Filed 6–1–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2017–0290; Special Conditions No. 23–281–SC]

Special Conditions: Pilatus Aircraft Limited Models PC–12, PC–12/45, PC–12/47; Autothrust System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: This special condition is for the Pilatus Aircraft Limited PC–12, PC–12/45, and PC–12/47 airplanes. These airplanes, as modified by Innovative Solutions & Support, Inc., will have a novel or unusual design feature associated with the use of an autothrust system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This special condition contains the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This special condition is effective June 2, 2017 and is applicable beginning May 24, 2017.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2016, Innovative Solutions & Support applied for a supplemental type certificate for installation of an autothrust system in the PC–12, PC–12/45, and PC–12/47 airplanes. The autothrust system is capable of setting forward thrust based on operation in either a pilot selectable torque or airspeed mode. Operation is limited to use only when above 400 feet above ground level (AGL) after takeoff, and requires disengagement at decision height (DH) or minimum decision altitude (MDA) on approach. The PC–12, PC–12/45, and PC–12/47 airplanes are nine-passenger, two-crewmember, single-engine turbo-propeller airplanes with a 30,000-foot service ceiling and a maximum takeoff weight of 9,039 to 10,450 pounds—depending on airplane model. These airplanes are powered by a single Pratt & Whitney PT6A–67 engine.

The Innovative Solutions & Support, Inc., modification installs an autothrust system in the PC–12, PC–12/45, and PC–12/47 airplanes to reduce pilot workload. The autothrust system is useable in all phases of flight from 400 feet AGL after takeoff down to the decision height on approach. The system includes a torque and airspeed mode along with monitors to prevent the system from exceeding critical engine or airspeed limits. A stepper motor provides throttle movement by acting through a linear actuator, which acts as a link between the stepper motor and throttle. The pilot can override the linear actuator by moving the throttle, which automatically disengages the autothrust system upon disagreement in the expected throttle position versus the actual position.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Innovative Solutions & Support must show that the PC–12, PC–12/45, and PC–12/47 airplanes, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A78EU. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in A78EU are as follows: 14 CFR part 23, amendments 23–1 through 23–42.[1]

If the Administrator finds the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the PC–12, PC–12/45, and PC–12/47 airplanes because of a novel or unusual design feature(s), special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the PC–12, PC–12/45, and PC–12/47 airplanes 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.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38 and they become part of the type certification basis under § 21.101. Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the

[1] *See* Type Certification Data Sheet A78EU, revision 25, ''Certification Basis'' section for the PC–12, PC–12/45, and PC–12/47 full certification basis. (*http://rgl.faa.gov/.*)

same type certificate to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to the other model under § 21.101.

Novel or Unusual Design Features

The PC–12, PC–12/45, and PC–12/47 airplanes will incorporate the following novel or unusual design feature:

Autothrust system

Discussion

As discussed in the summary section, this modification makes use of an autothrust system, which is a novel design for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Mandating additional requirements—developed in part—by adapting relevant portions of 14 CFR 25.1329, *Flight guidance systems*—applicable to autothrust systems—along with FAA experience with similar autothrust systems, mitigates the concerns associated with installation of the proposed autothrust system.

The FAA has previously issued this proposed special condition to part 23 turbojet airplanes, but not for turbo-propeller airplanes. The PC–12, PC–12/45, and PC–12/47 airplanes are unique with respect to other turbo-propeller designs in that the basic design does not include a separate propeller control lever. Future use of these special conditions on other turbo-propeller designs will require evaluation of the engine and propeller control system to determine their appropriateness.

Discussion of Comments

Notice of proposed special conditions No. 23–17–01–SC for the Pilatus Aircraft Limited PC–12, PC–12/45, and PC–12/47 airplanes was published in the **Federal Register** on April 14, 2017 (82 FR 17943).[2] No comments were received, and the special condition is adopted as proposed.

Applicability

As discussed above, this special condition is applicable to the PC–12, PC–12/45, and PC–12/47 airplanes. Should Innovative Solutions & Support, Ltd. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A78EU to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

[2] *Refer* to the U.S. Government Printing Office at *https://www.gpo.gov/*.

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 STC for the Pilatus Aircraft, Ltd., PC–12, PC–12/45, and PC–12/47 airplanes is imminent, pursuant to 5 U.S.C. 553(d), the FAA finds that good cause exists to make this special condition effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on PC–12, PC–12/45, and PC–12/47 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(f), 106(g); 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Pilatus Aircraft Ltd., PC–12, PC–12/45, and PC–12/47 airplanes modified by Innovative Solutions & Support, Inc.

1. Autothrust System

In addition to the requirements of §§ 23.143, 23.1309, and 23.1329, the following apply:

(a) Quick disengagement controls for the autothrust function must be provided for each pilot. The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust function when manually commanded by the pilot must be assessed in accordance with the requirements of § 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to affect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph (l)(1) of this special condition.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (l)(2) of this special condition.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on—or adjacent to—each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. A means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution (visual and auditory) must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not

consistent with response to flightcrew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require—in order to remain within or recover to the normal flight envelope—any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot which are greater than those specified in § 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

Issued in Kansas City, Missouri, on May 24, 2017.

Wes Ryan,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11347 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0010]

RIN 1625–AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its special local regulations relating to recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a special local regulation. Through this rulemaking the current list of recurring special local regulations is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective June 2, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0010 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 Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *James.C.Robinson@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 Captain of the Port (COTP) Ohio Valley is establishing, amending, and updating its current list of recurring special local regulations codified under 33 CFR 100.801 in Table no. 1, for the COTP Ohio Valley zone.

On March 27, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Sector Ohio Valley Annual and Recurring Special Local Regulations Update (82 FR 15174). During the comment period that ended April 26, 2017, no comments were received.

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**. It would be impracticable to provide a full 30-days notice because this rule must be effective June 16, 2017.

III. Legal Authority and Need for Rule

The Coast Guard's authority for establishing a special local regulation is contained at 33 U.S.C. 1233. The Coast Guard is amending and updating the special local regulations under 33 CFR part 100 to include the most up to date list of recurring special local regulations for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include marine parades, boat races, swim events, and others. The current list under 33 CFR 100.801 requires amending to provide new information on existing special local regulations, include new special local regulations expected to recur annually or biannually, and to remove special local regulations that are no longer required. Issuing individual regulations for each new special local regulation, amendment, or removal of an existing special local regulation creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring special local regulations.

IV. Discussion of Comments, Changes, and the Rule

No comments were received. No changes to the proposed rule have been made.

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 rule 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.

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes special local regulations limiting access to certain areas under 33 CFR part 100 within Sector Ohio Valley's AOR. The effect of this rulemaking will not be significant because these special local regulations are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan around the special local regulations in advance. Deviation from the special local regulations established

through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these special local regulations so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted areas.

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 received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the special local regulation areas during periods of enforcement. The special local regulations will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the special local regulations established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

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.

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 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 the establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERWAYS

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

Authority: 33 U.S.C. 1233.

■ 2. In § 100.801, revise table 1 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS

Date	Event/sponsor	Ohio Valley location	Regulated area
1. The first Saturday in April	University of Charleston Rowing/ West Virginia Governor's Cup Regatta.	Charleston, WV	Kanawha River, Mile 59.9–61.4 (West Virginia).
2. 1 day—During the last week of April or first week of May.	Kentucky Derby Festival/Belle of Louisville Operating Board/Great Steamboat Race.	Louisville, KY	Ohio River, Mile 596.0–604.3 (Kentucky).
3. 1 day—Third or fourth weekend in May.	REV3/REV3 Triathlon	Knoxville, TN	Tennessee River, Mile 646.0–649.0 (Tennessee).
4. 1 day—Third weekend in May	World Triathlon Corporation/ IRONMAN 70.3.	Chattanooga, TN	Tennessee River, Mile 463.0–466.0 (Tennessee).
5. 1 day—Second weekend in June	Chattanooga Parks and Rec/Chattanooga River Rats Open Water Swim.	Chattanooga, TN	Tennessee River, Mile 464.0–469.0 (Tennessee).
6. 1 day—Third or fourth weekend in June.	Greater Morgantown Convention and Visitors Bureau/Mountaineer Triathlon.	Morgantown, WV	Monongahela River, Mile 101.0–102.0 (West Virginia).
7. 2 days—First weekend of June	Kentucky Drag Boat Association	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
8. 1 day—One of the first two weekends in August.	Green Umbrella/Ohio River Paddlefest.	Cincinnati, OH	Ohio River, Mile 459.5–470.2 (Ohio and Kentucky).
9. 1 day—Fourth or fifth Sunday in September.	Green Umbrella/Great Ohio River Swim.	Cincinnati, OH	Ohio River, Mile 469.8–470.2 (Ohio and Kentucky).
10. 1 day—One of the last two weekends in September.	Ohio River Open Water Swim	Prospect, KY	Ohio River, Mile 588.0–590.0 9 (Kentucky).
11. 2 days—Second or third weekend in September.	Louisville Dragon Boat Festival	Louisville, KY	Ohio River, Mile 603.0–603.5 (Kentucky).
12. 1 day—Third or fourth Sunday of July.	Tucson Racing/Cincinnati Triathlon	Cincinnati, OH	Ohio River, Mile 469.3–470.2 (Ohio).
13. 2 days—First weekend of July	Kentucky Drag Boat Association	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
14. 1 day—Second weekend in July	Bradley Dean/Renaissance Man Triathlon.	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
15. 3 days—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN	Ohio River, Mile 555.0–560.0 (Indiana).
16. 1 day—One of the last three weekends in June.	Louisville Race the Bridge Triathlon	Louisville, KY	Ohio River, Mile 601.5–603.0 (Kentucky).
17. 1 day—Fourth weekend in June	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 463.0–465.0 (Tennessee).
18. 1 day—Fourth weekend in July	Team Magic/Music City Triathlon	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
19. 2 days—Last two weeks in July or first three weeks of August.	Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.5 (Pennsylvania).
20. 3 days—First week of August	EQT Pittsburgh Three Rivers Regatta.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.6, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
21. 2 days—First weekend of August	Kentucky Drag Boat Association	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
22. 2 days—One of the last two weekends in September.	Captain Quarters Regatta	Louisville, KY	Ohio River, Mile 595.0–597.0 (Kentucky).
23. 2 days—Second or third weekend in October.	Norton Healthcare/Ironman Triathlon	Louisville, KY	Ohio River, Mile 601.5–604.5 (Kentucky).
24. 2 days—Third full weekend (Saturday and Sunday) in August.	Ohio County Tourism/Rising Sun Boat Races.	Rising Sun, IN	Ohio River, Mile 504.0–508.0 (Indiana and Kentucky).
25. 1 day—Last weekend in August	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 647.0–649.0 (Tennessee).
26. 3 days—Third weekend in August.	Governors' Cup/UWP–IJSBA National Championships.	Charleston, WV	Kanawha River, Mile 56.7–57.6 (West Virginia).
27. 2 days—Fourth weekend in July	Herd Racing LLC/Huntington Classic	Huntington, WV	Ohio River, Mile 307.3–309.3 (West Virginia).
28. 2 days—Labor Day weekend	Wheeling Vintage Race Boat Association Ohio/Wheeling Vintage Regatta.	Wheeling, WV	Ohio River, Mile 090.4–091.5 (West Virginia).
29. 2 days—Weekend before Labor Day.	SUP3Rivers The Southside Outside	Pittsburgh, PA	Monongahela River, Mile 0.0–3.09 Allegheny River Mile 0.0–0.25 (Pennsylvania).
30. 1 day—Saturday before Labor Day.	Wheeling Dragon Boat Race	Wheeling, WV	Ohio River, Mile 90.4–91.5 (West Virginia).
31. 1 day—First or second weekend in September.	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
32. 2 days—First or second weekend in September.	State Dock/Cumberland Poker Run	Jamestown, KY	Lake Cumberland (Kentucky).
33. 3 days—First or second weekend in September.	Sailing for a Cure Foundation/SFAC Fleur de Lis Regatta.	Louisville, KY	Ohio River, Mile 601.0–604.0 (Kentucky).
34. 1 day—Last weekend in September.	World Triathlon Corporation/IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 463.0–467.0 (Tennessee).
35. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest Cardboard Boat Regatta.	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).
36. 2 days—First weekend of October.	Three Rivers Rowing Association/Head of the Ohio Regatta.	Pittsburgh, PA	Allegheny River, Mile 0.0–4.0 (Pennsylvania).
37. 1 day—First or second weekend in October.	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 464.0–467.0 (Tennessee).
38. 1 day—Third weekend in November.	TREC–RACE/Pangorge	Chattanooga, TN	Tennessee River, Mile 444.0–455.0 (Tennessee).
39. 3 days—First weekend in November.	Atlanta Rowing Club/Head of the Hooch Rowing Regatta.	Chattanooga, TN	Tennessee River, Mile 464.0–467.0 (Tennessee).
40. One Saturday in June or July	Paducah Summer Festival/Cross River Swim.	Paducah, KY	Ohio River, Mile 934–936 (Kentucky).
41. 1 day—During the last weekend in May.	Louisville Metro Government/Mayor's Healthy Hometown Subway Fresh Fit, Hike, Bike and Paddle.	Louisville, KY	Ohio River, Mile 602.0–603.5 (Kentucky).
42. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Shriners Festival.	Evansville, IN	Ohio River, Mile 791.0–795.0 (Indiana).
43. 1 day—Second or third Saturday in July.	Allegheny Mountain LMSC/Search for Monongy.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.6 (Pennsylvania).
44. 1 day—During the first week of July.	Evansville Freedom Celebration/4th of July Freedom Celebration.	Evansville, IN	Ohio River, Mile 791.0–796.0 (Indiana).
45. 1 day—First weekend in September.	Louisville Metro Government/Mayor's Healthy Hometown Subway Fresh Fit, Hike, Bike and Paddle.	Louisville, KY	Ohio River, Mile 602.0–603.5 (Kentucky).
46. 2 days—One of the last three weekends in July.	Dare to Care/KFC Mayor's Cup Paddle Sports Races/Voyageur Canoe World Championships.	Louisville, KY	Ohio River, Mile 601.0–604.0 (Kentucky).
47. 3 days—Fourth weekend in August.	Kentucky Drag Boat Association/Thunder on the Green.	Livermore, KY	Green River, Mile 70.0–71.5 (Kentucky).
48. 1 day—Fourth weekend in August.	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 333.0–334.5 (Alabama).
49. 3 days—One of the last three weekends in September or first weekend in October.	Hadi Shrine/Owensboro Air Show	Owensboro, KY	Ohio River, Mile 755.0–759.0 (Kentucky).
50. 1 day—First Sunday in August	HealthyHuntington.org/St. Marys Tristate Triathlon.	Huntington, WV	Ohio River, Mile 307.3–308.3 (West Virginia).
51. 2 days—First Weekend in August.	Buckeye Outboard Association/Portsmouth Challenge.	Portsmouth, OH	Ohio River, Mile 355.3–356.7 (Ohio).
52. 1 day—Sunday before Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 464.0–476.0 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
53. Second Sunday in September	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH	Ohio River, Mile 170.5–172.5 (Ohio).
54. Second Saturday in September	Parkesburg Paddle Fest	Parkersburg, WV	Ohio River, Mile 184.3–188 (West Virginia).
55. Three days during the fourth weekend in September.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV	Ohio River, Mile 128–129 (West Virginia).
56. First weekend in July	Eddyville Creek Marina/Thunder Over Eddy Bay.	Eddyville, KY	Cumberland River, Mile 46.0–47.0 (Kentucky).
57. First or second weekend of July	Prizer Point Marina/4th of July Celebration.	Cadiz, KY	Cumberland River, Mile 54.0–55.09 (Kentucky).
58. 2 days—Last weekend in May or first weekend in June.	Visit Knoxville/Racing on the Tennessee.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
59. 1 day—First or second weekend in August.	Riverbluff Triathlon	Ashland City, TN	Cumberland River, Mile 157.0–159.0 (Tennessee).
60. 2 days—First weekend in August	POWERBOAT NATIONALS—Ravenswood Regatta.	Ravenswood, WV	Ohio River, Mile 220.5–221.5 (West Virginia).
61. 3 days—One of the last three weekends in June.	Lawrenceburg Regatta/Whiskey City Regatta.	Lawrenceburg, IN	Ohio River, Mile 492.0–496.0 (Indiana).
62. 2 days—One of the last three weekends in September.	Madison Vintage Thunder	Madison, IN	Ohio River, Mile 557.5–558.5 (Indiana).
63. 1 day—Fourth weekend in October.	Chattajack	Chattanooga, TN	Tennessee River, Mile 463.7–464.5 (Tennessee).

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
64. 1 day—Third weekend in March	Vanderbilt Invite	Nashville, TN	Cumberland River, Mile 189.0–192.0 (Tennessee).
65. 2 days—Last weekend in September.	Music City Head Race	Nashville, TN	Cumberland River, Mile 190.5–195.0 (Tennessee).
66. 1 day—Last weekend in July	Music City SUP Race	Nashville, TN	Cumberland River, Mile 190.0–191.5 (Tennessee).
67. 3 days—Third weekend in June	Thunder on the Cumberland	Nashville, TN	Cumberland River, Mile 190.5–194.0 (Tennessee).
68. 3 days—Second weekend in May.	ACRA Henley	Nashville, TN	Cumberland River, Mile 189.0–193.0 (Tennessee).
69. 2 days—Third weekend in August.	Kittanning Riverbration Boat Races	Kittanning, PA	Allegheny River, Mile 44.0–45.5 (Pennsylvania).
70. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Mile 598.0–603.0 (Kentucky).
71. 3 days—One of the first two weekends in September.	Evansville HydroFest	Evansville, IN	Ohio River, Mile 791.8.0–793.0.

* * * * *

Dated: 25 May 2017.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2017–11473 Filed 6–1–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0349]

RIN 1625–AA00

Safety Zone; Detroit Symphony Orchestra Fireworks, Lake St. Clair, Grosse Pointe Shores, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 600-foot radius of a portion of Lake St. Clair, Grosse Point, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Detroit Symphony Orchestra Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit.

DATES: This temporary final rule is effective from 10:15 p.m. on July 7, 2017, through 10:45 p.m. on July 8, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0349 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 temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

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 Detroit (COTP) has determined that potential hazard associated with fireworks from 10:15 p.m. to 10:45 p.m. on July 7 and from 10:15 p.m. to 10:45 p.m. on July 8, 2017 will be a safety concern to anyone within a 600-foot radius of the launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks are being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 10:15 p.m. through 10:45 p.m. on July 7 and July 8, 2017. The safety zone will encompass all U.S. navigable waters of Lake St. Clair, Grosse Point Shores, MI, within a 600-foot radius of position 42°27.25′ N., 082°51.8′ W. (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

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. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' This rule 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.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This 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 impact a small designated area of Lake St. Clair from 10:15 p.m. to 10:45 p.m. on July 7 and from 10:15 p.m. to 10:45 p.m. on July 8, 2017. 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 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 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 thirty minutes that will prohibit entry within 600-feet firework launch site. It is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(g) of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

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 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.T09–0349 to read as follows:

§ 165.T09–0349 Safety Zone; Detroit Symphony Orchestra Fireworks, Lake St. Clair; Grosse Pointe Shores, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of Lake St. Clair, Grosse Pointe Shores, MI, within a 600-foot radius of position 42°27.25′ N., 082°51.8′ W. (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) will be enforced from 10:15 p.m. through 10:45 p.m. on July 7 and from 10:15 p.m. through 10:45 p.m. on July 8, 2017.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to enter or operate within the safety zone. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313—568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: May 22, 2017.

Scott B. LeMasters,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2017–11427 Filed 6–1–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0401]

RIN 1625–AA00

Safety Zone; East River and Buttermilk Channel, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Brooklyn half of the East River, south of Dupont Street in Greenpoint, Brooklyn and East 25th Street in Manhattan, and Buttermilk Channel, north of the Buttermilk Channel Entrance Lighted Gong Buoy 1 (LLNR 36985). The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a dielectric oil spill response and shoreside repair operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

DATES: This rule is effective without actual notice from June 2, 2017 through 5 p.m. on July 14, 2017. For the purposes of enforcement, actual notice will be used from 4 p.m. on May 8, 2017 June 2, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0401 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 Mr. Jeff Yunker, Sector New York Waterways Management Division; telephone 718–354–4195, email *jeff.m.yunker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PCB Polychlorinated Biphenyl
§ 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 it would be impracticable and contrary to the public interest to delay this rule to let a comment period run. It would be impracticable and contrary to the public interest because waiting for a comment period to run would inhibit the Coast Guard's response to protecting the environment and public from the dangers associated with a maritime pollution response and shoreside repair efforts.

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**. Delaying the effective date of this rule would be impracticable and contrary to public interest for the same reasons discussed in the preceding paragraph.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that the emergency pollution response activities pose hazards to the boating public within the Brooklyn, NY half of the East River and Buttermilk Channel. The COTP has determined that this rule is necessary to protect the public from these hazards.

IV. Discussion of the Rule

This rule establishes a safety zone from 4 p.m. on May 8, 2017 through 5 p.m. on July 14, 2017. The safety zone will cover all navigable waters of the Brooklyn, NY half of the East River and Buttermilk Channel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the dielectric fluid is being recovered and necessary shoreside repair operations are ongoing. No person or vessel will be permitted to enter the safety zone unless obtaining permission from the COTP or a designated representative.

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 rule 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, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the East River and Buttermilk Channel for approximately two months. 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 if the response activities are completed in less than two months.

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 recreational 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 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 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 the establishment of a safety zone for up to two months. Therefore, it is excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration for Categorically Excluded Actions is 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 recordkeeping 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, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0401 to read as follows:

§ 165.T01–0401 Safety Zone; East River and Buttermilk Channel, NY.

(a) *Location.* The following area is a safety zone: All waters of the Brooklyn half of the East River, south of a line drawn from (pa) 40°44′07.5″ N., 073°57′40.3″ W. (Dupont Street, Greenpoint, Brooklyn, NY) to 40°44′10.1″ N., 073°58′21.6″ W. (NAD 83) (East 25th Street, Manhattan, NY) and Buttermilk Channel, north of the Buttermilk Channel Entrance Lighted Gong Buoy 1 (LLNR 36985).

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative.* 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 to act on his or her behalf. A 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. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official patrol vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) *Enforcement period.* This safety zone is effective and will be enforced from 4 p.m. on May 8, 2017 through 5 p.m. on July 14, 2017.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) During periods of enforcement, no vessel shall enter the safety zone unless permitted by the COTP or a designated representative. Any person or vessel allowed to enter the safety zone must comply with all orders and directions from the COTP or a COTP's designated representative while said person or vessel is within the safety zone.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: May 8, 2017.

Michael H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2017–11463 Filed 6–1–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0451]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Vidalia, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending an established safety zone for emergency purposes for all navigable waters of the Lower Mississippi River (LMR), extending the entire width from mile 311.0 to mile 317.0. This emergency safety zone is needed to protect persons, property, and flood control infrastructure from the potential safety hazards associated with vessels underway transiting this area with dangerously high water levels. Entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

DATES: This rule is effective from 5 p.m. on May 19, 2017 through 11:59 p.m. on June 2, 2017, or until the water levels have lowered to a less dangerous level, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from May 19, 2017 through June 2, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0451 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 LT Ryan C. Thomas, U.S. Coast Guard; telephone 901–521–4825, email *Ryan.C.Thomas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Lower Mississippi River
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 the water levels have risen rapidly to dangerous levels and immediate action is needed to protect persons, and property during response efforts. Completing the full NPRM process is impracticable because we must establish this safety zone by May 19, 2017 and lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed during the emergency operations in response to the higher than normal water levels on May 19, 2017.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Coast Guard received notification from the US Army Corps of Engineers reporting high water levels are present in the vicinity of mile marker (MM) 315.0 on the Lower Mississippi River (LMR) near the Old River Control structures. As a result, danger of collision with the structures exists and is likely. The COTP Lower Mississippi River is establishing this safety zone effective from 5 p.m. May 19, 2017 to 11:59 p.m. June 2, 2017 or until the water levels have lowered to a less dangerous level, whichever occurs earlier. This rule is needed to protect personnel, vessels, flood infrastructure, and the marine environment in the navigable waters within the safety zone while the high water levels are present.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the LMR from mile 311.0 to mile 317.0, extending the entire width of the river, from 5 p.m. May 19, 2017 through 11:59 p.m. on June 2, 2017 or until the water levels have lowered to a less dangerous level, whichever occurs earlier. Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port Lower Mississippi River (COTP). The U.S. Army Corps of Engineers assist vessels present in the vicinity of the Old River Control Structure (WUG–424) have been delegated the authority to permit entry into this safety zone.

Entry into this zone is prohibited unless permission has been granted by the COTP or a designated representative. Broadcast Notice to Mariners (BNM) will provide any changes in the schedule for this safety zone. Requests to enter the zone will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1–901–521–4804 or can be reached by VHF–FM channel 16.

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 rule 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. This emergency safety zone will restrict navigation on the Mississippi River from mile 311.0 to 317.0 near Vidalia, Louisiana for 14 days. Vessels will be allowed to transit the zone with direction from the COTP or its designated representative. 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 an emergency safety zone that will prohibit entry into the zone unless permission has been granted by the COTP or a designated representative on the Mississippi River mile 311.0 to mile 317.0. It is categorically excluded from further review under paragraph L60 of Appendix A of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 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. Temporary § 165.T08–0451 is added to read as follows:

§ 165.T08–0451 Safety Zone; Mississippi River, Vidalia, LA.

(a) *Location.* The following area is an emergency safety zone: All navigable

waters of the Mississippi River between mile 311.0 and mile 317.0, extending the entire width of the river.

(b) *Enforcement date.* This rule is effective from 5 p.m. on May 19, 2017 through 11:59 p.m. on June 2, 2017, or until the water levels have lowered to a less dangerous level, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from May 19, 2017 through June 2, 2017.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River (COTP) or a designated representative.

(2) The U.S. Army Corps of Engineers assist vessels present in the vicinity of the Old River Control Structures are designated representatives and may permit entry into this safety zone. They may be contacted on VHF–FM Channel 16 or Channel 13.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: May 19, 2017.

T.J. Wendt,

Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.

[FR Doc. 2017–11462 Filed 6–1–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0372]

RIN 1625–AA08

Special Local Regulation; Motor City Mile; Detroit River; Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain waters of the Detroit River, Detroit, MI. This action is necessary and is intended to ensure safety of life on navigable waters to be used for a swimming event immediately prior to, during, and immediately after this event. This regulation requires vessels to maintain a minimum speed for safe navigation and maneuvering.

DATES: This temporary final rule is effective from 7 a.m. until 12 p.m. on July 6, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0372 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 temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@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
COTP Captain of the Port
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this swimming event until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

We are issuing this rule under 5 U.S.C. 553(d)(3), as the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the same reason noted above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to a youth swimming event along the water pose extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a Special Local Regulation around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 7 a.m. until 12 p.m. on July 6, 2017. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: All waters of the Detroit River, Belle Isle Beach between the following two lines: The first line is drawn directly across the channel from position 42°20.517′ N., 082°59.159′ W. to 42°20.705′ N., 082°59.233′ W. (NAD 83); the second line, to the north, is drawn directly across the channel from position 42°20.754′ N., 082°58.681′ W. to 42° 20.997′ N., 082°58.846″ W. (NAD 83).

An on-scene representative of the COTP or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state, or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16 or at 313–568–9560.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. Vessel traffic will be able to safely transit around this special local regulation zone which will impact a small designated area of 7 a.m. to 12 p.m. July 6, 2017. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local regulation and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the special local regulation 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 special local regulation lasting nine hours that will limit entry to a designated area. It is categorically excluded under section 2.B.2, figure 2–1, and paragraph 34(h) of the Instruction. A Record of Environmental Consideration (REC) is available in the docket where indicated in the **ADDRESSES** section of this preamble.

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 recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 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. 1233.

■ 2. Add § 165.T09–0372 to read as follows:

§ 165.T09–0372 Special local regulation; Motor City Mile; Detroit River; Detroit, MI.

(a) *Location.* A regulated area is established to encompass the following waterway: All waters of the Detroit River, Belle Isle Beach between the following two lines: The first line is drawn directly across the channel from position 42°20.517′ N., 082°59.159′ W. to 42°20.705′ N., 082°59.233′ W. (NAD 83); the second line, to the north, is drawn directly across the channel from position 42°20.754′ N., 082°58.681′ W. to 42°20.997″ N., 082°58.846″ W. (NAD 83).

(b) *Enforcement period.* This section is effective and will be enforced from 7 a.m. until 12 p.m. on July 6, 2017.

(c) *Regulations.*

(1) Vessels transiting through the regulated area are to maintain the minimum speeds for safe navigation.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9560. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The ''on-scene representative'' of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP Detroit or his on-scene representative to obtain permission to enter or operate within the special local regulation. The COTP Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Detroit or his on-scene representative.

Dated: May 26, 2017.

Scott B. Lemasters,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2017–11465 Filed 6–1–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2016–0583; FRL–9962–27–Region 4]

Air Plan Approval; Air Plan Approval and Air Quality Designation; GA; Redesignation of the Atlanta, Georgia 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 18, 2016, the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, submitted a request for the Environmental Protection Agency (EPA) to redesignate the Atlanta, Georgia 2008 8-hour ozone nonattainment area (hereinafter referred to as the ''Atlanta Area'' or ''Area'') to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. EPA is approving the State's maintenance plan, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2014 and 2030 for the Area, and redesignating the Area to attainment for the 2008 8-hour ozone NAAQS. Additionally, EPA finds the 2014 and 2030 MVEBs for the Atlanta Area adequate for the purposes of transportation conformity.

DATES: This rule will be effective June 2, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0583. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* 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 either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann can be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background for Final Actions

Effective July 20, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008. *See* 77 FR 30088 (May 21, 2012). The Atlanta Area was designated as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area.[1] On July 14, 2016, EPA issued a determination that the Area had attained the 2008 8-hour ozone NAAQS (81 FR 45419). On July 18, 2016, Georgia requested that EPA redesignate the Atlanta Area to attainment for the 2008 8-hour ozone NAAQS and submitted a SIP revision containing the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including 2014 and 2030 MVEBs for NO_X and VOC for the Atlanta Area. In a notice of proposed rulemaking (NPRM) published on December 23, 2016 (81 FR 94283), EPA proposed to approve the maintenance plan, including the 2014 and 2030 MVEBs for NO_X and VOC, and incorporate the plan into the Georgia SIP and to redesignate the Area to attainment for the 2008 8-hour ozone NAAQS. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO_X and VOC MVEBs for the Atlanta Area. The details of Georgia's submittal and the rationale for EPA's actions are further explained in the NPRM.

II. Response to Comments

EPA received one set of comments on its December 23, 2016, proposed rulemaking actions. Specifically, EPA received adverse comments from the Sierra Club (''Commenter''). These

[1] The Atlanta Area consists of Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding and Rockdale Counties in Georgia.

comments are provided in the docket for this final action. *See* Docket number EPA–R04–OAR–2016–0583. A summary of the adverse comments and EPA's responses are provided below.

Comment 1: The Commenter contends that EPA may not approve Georgia's request to redesignate the Atlanta Area to attainment because, according to the Commenter, the Atlanta Area failed to attain the 2008 8-hour ozone NAAQS. The Commenter believes that the Area failed to attain this NAAQS ''by law'' because the Cobb County ozone monitor did not meet the 75 percent data completeness requirement for 2014 or the 90 percent data completeness requirement for the 2013–2015 period.

Response 1: EPA disagrees with the Commenter that the Area has not attained the 2008 8-hour ozone NAAQS. EPA issued a final determination of attainment on July 14, 2016, based on the same 2013–2015 air quality data it is using as the basis of this redesignation action. *See* 81 FR 45419. EPA took notice and comment on its determination of attainment and the Commenter could have raised its concern to the Agency regarding data from the Kennesaw National Guard monitor (also known as the Cobb County monitor) at that time, but failed to do so. In any case, EPA does not find reason to alter its conclusion that the Area has attained the 2008 ozone NAAQS based on concerns raised in the comment, and the most recent available data and information continues to support this finding. With regard to the Commenter's concern regarding the 2014 ozone season data from the Kennesaw National Guard monitor, EPA's technical analysis, available in a technical support document located in the docket for this rulemaking, demonstrates that the 2013–2015 design value would not have violated the standard even assuming the most conservative estimates for the missing data from that monitor.

As described in greater detail in the technical support document, in EPA's technical judgment, the Area has attained the 2008 8-hour ozone NAAQS. In making its determination, EPA evaluated all valid certified monitoring data collected during 2013–2015 by monitors in or near the nonattainment area.[2] EPA also conducted the additional technical analysis described in the technical support document for the Kennesaw National Guard monitor, which did not collect complete data during 2014. The results of this technical analysis indicate that even under the most conservative estimates, it is very unlikely that the monitor would have violated the 2008 8-hour ozone NAAQS of 75 ppb.

Following publication of the proposed redesignation, Georgia certified its 2016 data for the Atlanta Area which shows that the Area continues to attain the NAAQS with a 2014–2016 design value of 75 ppb.[3] Incomplete data for the Kennesaw National Guard monitor in 2014 does not affect this conclusion because, as discussed above, EPA conducted an analysis and has concluded that it is very unlikely that the monitor would have violated the NAAQS if it had collected completed data.[4]

Comment 2: The Commenter argues that the interstate transport provision at CAA section 110(a)(2)(D)(i)(I) is an applicable requirement for the purposes of redesignation. Therefore, the Commenter does not believe that EPA can redesignate a nonattainment area to attainment unless the state has submitted, and EPA has approved, a SIP revision that contains adequate provisions prohibiting any source located in the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. Because Georgia did not submit a SIP revision satisfying the good neighbor provision for the 2008 8-hour ozone NAAQS, the Commenter contends that Georgia has not met all applicable requirements for redesignation of the Area under CAA section 107(d)(3)(E)(v) (requiring the State to have met all applicable requirements under section 110 and Part D) and section 107(d)(3)(E)(ii) (requiring the State to have a fully approved applicable SIP under section 110(k)).

Response 2: As discussed in the NPRM and in numerous other redesignation actions, EPA has long interpreted the section 110(a)(2)(D) interstate transport requirements as not applicable for the purposes of redesignation. *See, e.g.,* 81 FR 94283 (December 23, 2016), 78 FR 43096 (July 19, 2013), 76 FR 79579 (December 22, 2011), 74 FR 53198 (October 16, 2009), 72 FR 56312 (October 3, 2007). The Agency has consistently distinguished the section 110 and part D requirements that apply regardless of an area's attainment designation—such as 110(a)(2)(D) interstate transport requirements, 176(c) conformity requirements, section 184 ozone transport region measures, and section 211(m) oxygenated fuels requirements—from those requirements in section 110 and part D that are linked to the nonattainment designation of an area and thus no longer need be complied with upon redesignation to attainment status. If a requirement applies to an area regardless of whether its designation is nonattainment, maintenance, or attainment, and thus other parts of the CAA will continue to obligate the area to meet the requirement after redesignation, EPA has interpreted the requirement as not ''applicable'' for purposes of section 107(d)(3)(E)(ii) or (v). *See, e.g.,* 66 FR 53094 (October 19, 2001), 65 FR 37879 (June 19, 2000), 62 FR 24826 (May 7, 1997), 61 FR 53174 (October 10, 1996), 61 FR 20458 (May 7, 1996), 60 FR 62748 (December 7, 1995). Courts have upheld EPA's authority to interpret what constitutes an ''applicable'' requirement under section 107(d)(3)(E), and have deferred to EPA's interpretation that requirements that continue to apply after a redesignation are not ''applicable'' for purposes of section 107(d)(3)(E)(ii) and (v). *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001).

We note that EPA has acted consistently with this interpretation by issuing a number of actions outside the context of area redesignations to address CAA 110(a)(2)(D)(i)(I)'s transport provision. On October 26, 2016, EPA issued a final rulemaking (CSAPR Update) updating the regional NOx ozone season trading program established under the original 2011 Cross-State Air Pollution Rule. *See* 81 FR 74504. As described in more detail in the CSAPR Update, EPA conducted air quality modeling and concluded that Georgia did not significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in other states. Therefore, even though, as the Commenter points out, EPA did issue a finding of failure to submit a 110(a)(2)(D)(i)(I) transport SIP to Georgia, the Agency later determined that the State had no substantive obligation to reduce its emissions to meet its transport obligations for the 2008 ozone NAAQS.

Comment 3: The Commenter claims that neither Georgia nor EPA have sufficiently shown that the improvement in air quality is due to permanent and enforceable emissions reductions rather than to temporary

[2] EPA retrieved data for the monitors in the Atlanta Area and the Georgia Station CASTNET monitoring site in Pike County near the Atlanta Area.

[3] The air quality data is located at *https://www.epa.gov/outdoor-air-quality-data.*

[4] The fourth-highest daily maximum 8-hour average value for 2016 at the Kennesaw National Guard monitor is 70 ppb.

fluctuations in weather or the economy, from decreased electricity production in the Area, or from impermanent and unenforceable measures. The Commenter believes that EPA did nothing more than cite to and summarize certain applicable pollutant control regulations and that EPA must estimate the percent reduction achieved from each of the cited measures ''in order to clearly show that the air quality improvements are indeed the result of implemented permanent and enforceable controls.'' The Commenter also states that the Utility Mercury Air Toxics Standards (MATS), listed in the section of the NPRM discussing permanent and enforceable measures, cannot have improved air quality during the relevant time period and that MATS does not have any relevance for ozone.

Response 3: EPA does not agree with the Commenter that the Agency has not properly determined that the Area's attainment is due to permanent and enforceable reductions in emissions, as required by CAA section 107(d)(3)(E)(iii). EPA's approach in this action is consistent with its long-standing interpretation that to satisfy that provision, as set forth in the Calcagni Memorandum cited by the Commenter, EPA must show that the improvement in air quality necessary for an area to attain the relevant NAAQS is *reasonably attributable* to permanent and enforceable reductions in emissions.[5] As recently affirmed by the U.S. Court of Appeals for the Seventh Circuit, EPA's approach to demonstrating that section 107(d)(3)(E)(iii) has been met is a reasonable and appropriate method of meeting the CAA's requirements. *See Sierra Club* v. *EPA,* 774 F.3d 383 (7th Cir. 2014). As noted by the court, it is not necessary for EPA to ''prove causation to an absolute certainty,'' and the Agency is entitled to deference when using its ''experience, expertise, and professional judgment'' in determining whether the improvement in air quality is reasonably attributable to permanent and enforceable measures. *See Sierra Club,* 774 F.3d at 395–96 (agreeing with EPA that its approach sufficed, and that an ''elaborate analytical exercise is not required by the CAA''). In this case, the Commenter claims that EPA's demonstration is inadequate and charges that the Agency must estimate the percent reduction achieved from each of the permanent and enforceable measures in order for the Agency to redesignate an area. In fact, for the measures that were primarily responsible for the improvement in ozone concentrations in the Area, EPA *did* estimate the percentage reduction in emissions. The majority of ozone precursor emissions in the Area are generated by mobile sources, and the vast majority of emission reductions in the Area are similarly associated with the permanent and enforceable mobile source measures identified in the NPRM.[6]

Consistent with the Calcagni Memorandum, Georgia and EPA also took steps in the analysis, as outlined in the NPRM, to ensure that the improvement in air quality was not due to temporary weather conditions. Georgia provided and EPA evaluated ozone season temperature and precipitation data for the Area from 1930 through 2015. *See* 81 FR 94288. This data shows that the average temperature and precipitation in 2013 fluctuates around the average meteorological conditions; the years 2014 and 2015 were hotter than the 1930–2000 average temperature; and precipitation in 2014 was less than the 1930–2000 average. Therefore, EPA proposed to determine that the improvement in ozone air quality was not the result of unusually favorable weather conditions. The Commenter did not provide any climatological data to refute this proposed determination. Although the Commenter claims that EPA and the State must also demonstrate that the improvement in air quality was not due to the economy or decreased electricity production, EPA does not have any information indicating that the improvement was due to these factors and the Commenter has not provided any such information.

Consistent with EPA's long-standing practice and policy, a comparison of nonattainment period emissions with attainment period emissions is relevant in demonstrating permanent and enforceable emissions reductions. EPA has evaluated the ozone precursor emissions data in the Area and found that there were significant reductions in these emissions in multiple source categories from 2011 (a nonattainment year) to 2014 (an attainment year). During this time period, the emissions data show that non-road NO_X and VOC emissions decreased, point source NO_X emissions decreased, and mobile NO_X and VOC emissions decreased. During this time period, mobile source emissions provided the greatest reductions, with NO_X emissions decreasing by approximately 60 tons per summer day (tpsd) (equating to 72 percent of the total NO_X emissions reductions) and mobile source VOC emissions decreased by approximately 34 tpsd (equating to 68 percent of the total VOC emissions reductions). It is not necessary for every change in emissions between the nonattainment year and the attainment year to be permanent and enforceable. Rather, as discussed above, the CAA requires that improvement in air quality necessary for an area to attain the relevant NAAQS must be reasonably attributable to permanent and enforceable emission reductions in emissions.

TABLE 1—NO_X EMISSIONS FOR THE ATLANTA 2008 8-HOUR OZONE NAAQS NONATTAINMENT AREA

[Tons per summer day][7]

Year	Point source	Area source	On-road	Non-road	Total
2011	54.63	4.63	214.98	91.92	366.16
2014	31.36	4.88	170.15	76.69	283.08

[5] Memorandum from John Calcagni, Director, Air Quality Management Division, to EPA regional air directors re: Procedures for Processing Requests to Redesignate Areas to Attainment (September 4, 1992), p.4.

[6] In 2011, mobile sources accounted for approximately 84 percent of NO_X emissions and 53 percent of VOC emissions in the Area. *See* 80 FR 48036 (August 11, 2015). In 2014, mobile sources accounted for approximately 87 percent of NO_X emissions and 51 percent of VOC emissions. *See* 81 FR 94283. The comparison of the 2011 and 2014 emissions inventories in Table 2, below, shows that mobile source NO_X emissions decreased by approximately 60 tons per summer day (tpsd) (equating to 72 percent of the total NO_X emissions reductions) and mobile source VOC emissions decreased by approximately 34 tpsd (equating to 68 percent of the total VOC emissions reductions).

[7] For 2011, Georgia also reported 3.45 tpsd of biogenic emissions not included in this total; for 2014, the area source emissions total includes 0.01 tons per summer day of wild and prescribed fires.

TABLE 2—VOC EMISSIONS FOR THE ATLANTA 2008 8-HOUR OZONE NAAQS NONATTAINMENT AREA

[Tons per summer day][8]

Year	Point source	Area source	On-road	Non-road	Total
2011	10.36	137.06	108.62	60.56	316.60
2014	11.24	119.88	81.76	53.38	266.26

The State calculated the on-road and non-road mobile source emissions summarized in Tables 2 and 3 using EPA-approved models and procedures that account for fleet turnover, increased population, and the federal mobile source measures identified as permanent and enforceable measures in the NPRM such as the Tier 2 vehicle and fuel standards, the large non-road diesel engines rule,[9] heavy-duty gasoline and diesel highway vehicle standards,[10] medium and heavy duty vehicle fuel consumption and greenhouse gas (GHG) standards,[11] non-road spark-ignition engines and recreational engines standards,[12] and the national program for GHG emissions and fuel economy standards.[13] [14] These mobile source measures have resulted in, and continue to result in, large reductions in NO_X emissions over time due to fleet turnover (*i.e.,* the replacement of older vehicles that predate the standards with newer vehicles that meet the standards). For example, implementation of the Tier 2 standards began in 2004, and as newer, cleaner cars enter the national fleet, these standards continue to significantly reduce NO_X emissions. As discussed in the NPRM, EPA expects that these standards will reduce NO_X emissions from vehicles by approximately 74 percent by 2030, translating to nearly 3 million tons annually by 2030.[15]

Regarding MATS, EPA acknowledges that it inadvertently included this rule as a permanent and enforceable measure. As the Commenter correctly notes, MATS did not result in permanent and enforceable emissions reductions in the Area during the relevant time period because the State extended the compliance date for the relevant sources in the Area to April 2016.

The SIP-approved state measures resulting in permanent and enforceable emission reductions include Georgia Rule 391–3–1–.02(2)(yy)—Emissions of Nitrogen Oxides, Georgia Rule 391–3–1–.02(2)(jjj)—NO_X from EGUs, Georgia Rule 391–3–1–.02(2)(lll)—NO_X from Fuel Burning Equipment, Georgia Rule 391–3–1–.02(2)(nnn)—NO_X from Stationary Gas Turbines, Georgia Rule 391–3–1–.02(2)(rrr)—NO_X from Small Fuel Burning Equipment, and Georgia Rule Chapter 391–3–20—Enhanced Inspection and Maintenance. The federal measures resulting in permanent and enforceable emission reductions include the Clean Air Interstate Rule (CAIR)/Cross-State Air Pollution Rule (CSAPR), Tier 2 vehicle and fuel standards, large non-road diesel engines rule, medium and heavy-duty vehicle fuel consumption and GHG standards, heavy-duty gasoline and diesel highway vehicle standards, nonroad spark-ignition engines and recreational engines standards, national program for GHG emissions and fuel economy standards, and Boiler and Reciprocating Internal Combustion Engine (RICE) National Emissions Standards for Hazardous Air Pollutants (NESHAP).

The inadvertent inclusion of the MATS Rule in the NPRM does not affect EPA's conclusion that the improvement in ozone air quality is reasonably attributable to the remaining measures identified in the NPRM. Although MATS did not result in permanent and enforceable reductions until April 2016, it is expected to result in further reductions in NOx emissions during the maintenance period.[16]

Comment 4: The Commenter asserts that Georgia's maintenance plan is inadequate to ensure maintenance of the 2008 8-hour ozone standard in the Area over the next ten years. The specific arguments offered by the Commenter in support of its assertion are summarized in Comments 4(a) through 4(c), below.

Comment 4a: The Commenter states that neither Georgia nor EPA can be sure that the attainment inventory for 2014, the attainment year used by the State to demonstrate maintenance throughout the first 10-year maintenance period, is sufficient to attain the standard because ''2014 is the year that the ozone season monitoring data for the Cobb County monitor failed to meet either of the statutory completeness requirements for an attainment designation.''

Response 4a: As discussed above in response to Comment 1, EPA determined that the Area is attaining the standard and has conducted technical analyses to support this determination. For NAAQS based on a three-year averaging period, EPA allows states to develop attainment emissions inventories in their section 175A maintenance plans using any of the three years on which an attainment determination is based. *See, e.g.,* 80 FR 54577 (July 30, 2015), 79 FR 16734 (March 26, 2014), 78 FR 72040 (December 2, 2013), 78 FR 38648 (June 27, 2013). This approach is consistent with the guidance provided to states in preparing attainment inventories for 110(a)(1) maintenance plans for the 1997 8-hour ozone NAAQS. *See* Memorandum from Lydia Wegman, Director, Air Quality Strategies and Standards Division, to Air Division Directors, re: Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas under Section 110(a)(1) of

[8] For 2011, Georgia also reported 914.88 tpsd of biogenic emissions that are not included in this total; for 2014, the area source emissions total includes 0.02 tpsd of wild and prescribed fires.

[9] EPA estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent nationwide.

[10] EPA projects a 2.6 million ton reduction in NO_X emissions by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards. 66 FR 5002, 5012 (January 18, 2001).

[11] When fully implemented in 2018, this rule is expected to reduce NO_X emissions from the covered vehicles by 20 percent.

[12] When fully implemented, the standards will result in an 80 percent reduction in NO_X by 2020.

[13] Georgia used EPA's MOVES2010b and MOVES2014a model to calculate on-road emissions factors and used the NEI2011 and MOVES2014a for non-road emissions.

[14] Georgia used the interagency consultation process required by 40 CFR part 93 (known as the Transportation Conformity Rule) which requires EPA, the United States Department of Transportation, metropolitan planning organizations, state departments of transportation, and State and local air quality agencies to work together to develop applicable implementation plans. The on-road emissions were generated by an aggregate of the vehicle activity (generated from the travel demand model) on individual roadways multiplied by the appropriate emissions factor from MOVES2014. The assumptions which are included in the travel demand model, such as population, were reviewed through the interagency consultation process.

[15] EPA, Regulatory Announcement, EPA420–F–99–051 (December 1999), available at: *https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-passenger-cars-and.*

[16] *See* Regulatory Impact Analysis for Final Mercury and Air Toxics Standards, EPA–452/R–11–011/December 2011. Available at *https://www.epa.gov/sites/production/files/2015-11/documents/matsriafinal.pdf.*

Clean Air Act (May 20, 2005), p. 4. Therefore, it is appropriate to use 2014 as the attainment year in the maintenance demonstration for the Atlanta Area. Also, the Commenter has not raised any issues regarding the accuracy of the emissions inventory that was developed for 2014.

Comment 4b: The Commenter claims that the implementation schedules in the maintenance plan for the Tier I and Tier II contingency measures, allowing for up to 24 months for implementation, are ''unacceptably long and fail to satisfy the prompt response timing required by CAA Section 175A'' to correct ''potential monitored violations.'' The Commenter believes that Georgia should commit to selecting and implementing Tier I and Tier II contingency measures within 12 months of a trigger. The Commenter also states that ''[t]his issue is compounded by the fact that Georgia's most recent ozone monitoring data from 2016 demonstrate that a number of the Atlanta Area monitors continues to record annual fourth highest daily maximum 8-hour average ozone concentrations above the NAAQS.''

Response 4b: EPA disagrees with the Commenter's contention that the maintenance plan's implementation schedules for contingency measures fail to satisfy the ''prompt response'' requirement in CAA section 175A(d). This section of the CAA requires that a maintenance plan include such contingency provisions as the Administrator deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of an area. Thus, Congress gave EPA discretion to evaluate and determine the contingency measures that EPA ''deems necessary'' to assure that the state will promptly correct any subsequent violation.

Section 175A does not establish any deadlines for implementation of contingency measures after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must ''take effect . . . without further action by the State or [EPA].'' By contrast, section 175A(d) allows EPA to take into account the need of a state to assess, adopt, and implement contingency measures if and when a violation occurs after an area's redesignation to attainment. As noted by the U.S. Court of Appeals for the Sixth Circuit in *Greenbaum* v. *EPA,* 370 F.3d 527, 540 (6th Cir. 2004), EPA ''has been granted broad discretion by Congress in determining what is 'necessary to assure' prompt correction'' under section 175A, and ''no pre-determined schedule for adoption of the measures is necessary in each specific case.'' In making this determination, EPA accounts for the time that is required for states to analyze data and address the causes and appropriate means of remedying a violation. EPA also considers the time required to adopt and implement appropriate measures in assessing what ''promptly'' means in this context.

In the case of the Atlanta Area, EPA believes that the contingency measures set forth in the submittal, combined with the State's commitment to implement contingency measures as expeditiously as practicable but no later than 24 months of a trigger, provide assurance that the State will promptly correct a future violation. Given the uncertainty regarding the nature of the contingency measures required to address a violation, the State may need up to 24 months to enact new statutes; develop new or modified regulations and complete notice and comment rulemaking; or take actions authorized by current state law that require the purchase and installation of equipment (*e.g.,* diesel retrofits) or the development and implementation of new programs. In addition, EPA has previously approved implementation of contingency measures within 24 months of a violation to comply with the requirements of section 175A in several instances. *See, e.g.,* 81 FR 76891 (November 4, 2016), 80 FR 61775 (October 14, 2015), 79 FR 67120 (November 12, 2014), 78 FR 44494 (July 24, 2013), 77 FR 34819 (June 12, 2012), 76 FR 59512 (Sept. 27, 2011), 75 FR 2091 (January 14, 2010). EPA also notes that the Commenter did not provide any rationale for concluding that a 12-month implementation period is necessary to satisfy section 175A and that the Tier I response is not subject to section 175A(d) because it is triggered before any violation has occurred.

The Commenter's statement that ''this issue is compounded by'' fourth-highest daily maximum 2016 ozone concentrations ''above the NAAQS'' is unclear. In accordance with 40 CFR part 50, appendix I, the determination as to whether the Area meets the NAAQS is based on the three-year average of the annual fourth-highest readings at a monitor, not on a monitor's fourth-highest ozone value in a single year. No monitored value in a single year can itself be a violation. The Area has attained the NAAQS, as discussed in the response to Comment 1, and met the other criteria necessary for redesignation. Once the redesignation is effective, the State will follow its maintenance plan and implement contingency measures pursuant to that plan. If Georgia observes a fourth highest value of 0.076 ppm or greater at a single monitor for which the previous ozone season had a fourth highest value of 0.076 ppm or greater, a Tier 1 trigger will be activated and the State will take action consistent with the Tier I procedure described in the maintenance plan.

Comment 4c: The Commenter believes that the maintenance plan is ''likely inadequate'' to maintain the 2008 8-hour ozone NAAQS because, according to the Commenter, the assumptions underlying Georgia's maintenance determination ''likely underestimate the level of ozone reductions actually required to maintain the standard in light of increasingly warming temperatures to come.''

Response 4c: EPA does not agree that the maintenance plan is inadequate because it does not specifically consider the impacts of climate change on future ozone concentrations. EPA believes that the broad range of potential future climate outcomes and variability of projected response to these outcomes limits EPA's ability to develop specific actionable SIP policies for any specific location. Additionally, EPA generally believes that the natural variability in meteorological patterns will have a larger influence on ozone concentrations than climate influences over the relatively short-term SIP maintenance period. Thus, EPA believes it is appropriate to rely upon the existing technical guidance and applicable CAA provisions to ensure that ozone maintenance areas do not violate the NAAQS.

III. Final Action

EPA is taking two separate, but related, final actions. First, EPA is approving the maintenance plan for the Atlanta Area, including the NO_X and VOC MVEBs for 2014 and 2030, and incorporating it into the Georgia SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS, and the MVEBs meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5).

Second, EPA is approving Georgia's redesignation request for the 2008 8-hour ozone NAAQS for the Atlanta Area. Approval of the redesignation request changes the official designation of Bartow County, Cherokee County, Clayton County, Cobb County, Coweta County, DeKalb County, Douglas County, Fayette County, Forsyth

County, Fulton County, Gwinnett County, Henry County, Newton County, Paulding County, and Rockdale County in the Atlanta Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that EPA finds the newly-established NO_X and VOC MVEBs for the Atlanta Area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

EPA has determined that these actions are effective immediately upon publication under the authority of 5 U.S.C. 553(d)(1) and (d)(3). The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Section 553(d)(1) allows an effective date less than 30 days after publication if a substantive rule ''relieves a restriction.'' These actions qualify for the exception under section 553(d)(1) because they relieve the State of various requirements for the Area. Furthermore, section 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' EPA finds good cause to make these actions effective immediately pursuant to section 553(d)(3) because they do not create any new regulatory requirements such that affected parties would need time to prepare before the actions take effect.

IV. Statutory and Executive Order Reviews

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

- Are not significant regulatory actions 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 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. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: April 27, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570, the table in paragraph (e) is amended by adding the entry ''2008 8-hour ozone Maintenance Plan for the Atlanta Area'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
*	* * * *	*	*	*
2008 8-hour ozone Maintenance Plan for the Atlanta Area.	Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding and Rockdale Counties.	7/18/2016	6/2/2017, [insert **Federal Register** citation].	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. In § 81.311, the table entitled ''Georgia—2008 8-Hour Ozone NAAQS (Primary and secondary)'' is amended by revising the entry for ''Atlanta, GA: [2]'' to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Atlanta, GA: [2]	6/2/2017	Attainment.		
Bartow County	.....	*Attainment.*		
Cherokee County	.....	*Attainment.*		
Clayton County	.....	*Attainment.*		
Cobb County	.....	*Attainment.*		
Coweta County	.....	*Attainment.*		
DeKalb County	.....	*Attainment.*		
Douglas County	.....	*Attainment.*		
Fayette County	.....	*Attainment.*		
Forsyth County	.....	*Attainment.*		
Fulton County	.....	*Attainment.*		
Gwinnett County	.....	*Attainment.*		
Henry County	.....	*Attainment.*		
Newton County	.....	*Attainment.*		
Paulding County	.....	*Attainment.*		
Rockdale County	.....	*Attainment.*		
* * * *	*		*	*

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2017–10934 Filed 6–1–17; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA–HQ–OPP–2011–0183; FRL–9963–34]

Pesticides; Certification of Pesticide Applicators; Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: With this action, EPA is delaying the effective date for the final rule issued in the **Federal Register** on January 4, 2017, from June 5, 2017 to May 22, 2018. That rule addressed revisions to the Certification of Pesticide Applicators rule.

DATES: The effective date of the rule amending 40 CFR part 171 that published at 82 FR 952, January 4, 2017, delayed at 82 FR 8499, January 26, 2017, and 82 FR 14324, March 20, 2017, is further delayed until May 22, 2018.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0183, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Kevin Keaney, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 305–5557; email address: *keaney.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

On January 4, 2017, EPA published a final rule revising the regulation concerning the certification of applicators of restricted use pesticides (RUPs), promulgated in 40 CFR part 171 (82 FR 952; FRL–9956–70). The original effective date of March 6, 2017 was extended to March 21, 2017 by a final rule published in the **Federal Register** on January 26, 2017, entitled ''Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017'' (82 FR 8499). In that rule, EPA delayed the effective dates of the thirty regulations, including the final rule revising the regulation concerning the certification of applicators of restricted use pesticides (RUPs) issued on January 4, 2017 (82 FR 952) (FR–9956–70), as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review'' (January 20 Memorandum). The January 20 Memorandum directed the heads of Executive Departments and Agencies to postpone for 60 days from the date of the January 20 Memorandum the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect.

The January 20 Memorandum further directed that where appropriate and as permitted by applicable law, agencies should consider a rule to delay the effective date for regulations beyond that 60-day period. Accordingly, on March 20, 2017, EPA published the final rule ''Further Delay of Effective Dates for Five Final Regulations Published by the Environmental Protection Agency Between December 12, 2016 and January 17, 2017'' (82 FR 14324), to give recently arrived Agency officials the opportunity to conduct a substantive review of those five regulations, which included the revised Certification of Pesticide Applicators rule. Pursuant to that March 20, 2017 rule, the effective date of the revised Certification of Pesticide Applicators rule was extended to May 22, 2017.

On May 15, 2017, EPA solicited public comment on a proposed 12-month delay of the effective date until May 22, 2018 (82 FR 22294; FRL–9962–31). EPA received more than 130 comments in response to the May 15, 2017 request for comments on the proposal to further delay the effective date until May 22, 2018. On May 22, 2017, EPA published a rule that made an interim extension of the effective date of the revised Certification of Pesticide Applicators rule until June 5, 2017 in order to allow additional time for Agency officials to consider and respond to the public comments.

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), allows the effective date of an action to be less than 30 days from its publication date when a good cause finding is made. The primary reason for the 30-day waiting period between publication and effective date is to allow affected parties to adjust to new requirements. This rule does not impose any new requirements but rather postpones the effective date of requirements that are not yet in effect. As noted below, allowing the rule to go into effect could cause confusion and disruption for affected parties if the rule were subsequently substantially revised or repealed. Thus, EPA finds there is good cause to make this rule effective immediately upon publication.

In addition, EPA still has only one Senate-confirmed official, and the new Administration has not had the time to adequately review the January 4, 2017 certification rule. This extension to May 22, 2018, will prevent the confusion and disruption among regulatees and stakeholders that would result if the January 4, 2017 rule were to become effective (displace the existing regulation) and then substantially revised or repealed as a result of administrative review.

In this final rule, EPA is delaying the effective date of the January 4, 2017 revisions to the Certification of Pesticide Applicators rule until May 22, 2018. EPA is delaying the effective date of the January 4, 2017 revisions to the Certification of Pesticide Applicators rule until May 22, 2018 in accordance with the Presidential directives as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' and the principles identified in the April 25, 2017 Executive Order ''Promoting Agriculture and Rural Prosperity in America.''

II. Comments and Responses

EPA received more than 130 comments relevant to the proposal to further delay the effective date of the January 4, 2017 Certification of Pesticide Applicators rule until May 22, 2018. Seventeen comments were not relevant to this action because they did not address the extension of the effective date and instead urged EPA to ban chlorpyrifos or only included specific comments about the January 4, 2017 rule. Out of the relevant comments, 18 commenters supported the proposed 12-month extension of the effective date and the rest opposed the proposed 12-month extension.

Comments—specific provisions. About 20 of the comments included input on the specific provisions of the January 4, 2017 Certification of Pesticide Applicators rule.

EPA response—specific provisions. This final rule focuses on the extension of the effective date of the certification rule. Comments on the specific provisions of the revised certification rule are outside of the scope of this final rule and will be considered within the review of the rule through the Regulatory Reform Agenda efforts.

Comments—support. The comments supporting the 12-month extension of the effective date came from state pesticide regulatory agencies, a pesticide safety education program and a number of organizations representing state departments of agriculture, pesticide safety education programs, pesticide applicators, growers, pesticide manufacturers, and pesticide retailers. The commenters supported the 12-month extension for a variety of reasons. The most common reason was to allow EPA and states more time to prepare for the revisions to state certification programs, engage stakeholders, and develop information the states need to efficiently implement the January 4, 2017 rule. Some commenters supported the 12-month extension to give EPA time to revisit certain aspects of the January 4, 2017 rule and identified specific requirements, such as minimum age.

EPA response—support. EPA generally agrees with these comments. During the next 12 months, EPA plans to engage and work with the certifying authorities (states, tribes and federal agencies), pesticide safety education programs, pesticide applicators and other stakeholders to develop checklists, guidance and tools to facilitate the development of revised certification plans and to discuss how to effectively implement the certification rule. In addition, EPA will conduct a substantive review of the questions of fact, law and policy—all within the context of the very broad cost-benefit standard in FIFRA—during this period. As mentioned above, comments on the specific provisions of the revised certification rule will be considered within the review of the rule through the Regulatory Reform Agenda efforts.

Comments—adjust implementation schedule. One state pesticide regulatory agency supported the 12-month extension of the effective date of the Certification of Pesticide Applicators Rule as long as the implementation schedule in the January 4, 2017 rule is

extended as well. This implementation schedule allowed three years for certifying authorities to submit revised plans and an additional two years for EPA to review the plans and agree upon a timeline for the certifying authority to implement the plan.

EPA response—adjust implementation schedule. EPA agrees with this comment and intends to make corresponding changes to the implementation dates in 40 CFR 171.5 in a subsequent rulemaking.

Comments—implement protections sooner. The commenters opposing the 12-month extension included over 30 non-governmental organizations representing a range of interests, including but not limited to farm workers, environmental advocates, occupational or migrant health clinics and employment law, and many private citizens. The concerns raised by the commenters opposed to the delay covered several areas, which are summarized and responded to below.

The commenters urged EPA to begin implementing the rule in May 2017 to allow the intended protections to apply sooner. A few commenters argued that the extension would increase the risk of serious adverse effects on human health and the environment and one commenter pointed out that EPA identified preventable restricted use pesticide exposures to humans and the environment in the January 4, 2017 rule. This commenter stated that delaying the rule by a year means these types of exposures will occur for an additional year.

EPA response—implement protections sooner. The January 4, 2017 final certification rule would not have immediately put in place additional protections that would prevent or eliminate the types of exposures identified by EPA in its benefits analysis. The January 4, 2017 rule included an implementation schedule where the certifying authorities would have up to three years to submit revised certification plans that conform to the revised standards, so there already was going to be a delay in the protections actually being implemented by the certifying authorities. If EPA develops checklists, guidance and tools to facilitate the development of revised certification plans during the 12-month delay, it is possible that many certifying authorities will be able to submit the revised certification plans well before the three-year deadline for submitting plans.

Comments—basis for extension. Several commenters argued that EPA did not provide a rational basis for extending the effective date by a year, with one stating that, for that reason, the rule to extend the compliance date is arbitrary and capricious and an abuse of discretion. The commenters questioned what steps have been taken during the previous 4 months of extensions, what analyses would be done in the next year and why EPA needs 12 more months.

EPA response—basis for extension. Out of the 30 final regulations whose effective dates were delayed by the January 26, 2017 final rule, this is one of the few regulations with an effective date that has been extended several more times. The Administrator has determined that the certification rule requires a substantive review of the questions of fact, law and policy—all within the context of the very broad cost-benefit standard in FIFRA—so an additional 12 months is necessary and will provide more certainty to certifying authorities, pesticide safety education programs, pesticide applicators and other stakeholders than to have several medium term extensions. Extending the rule by 12 months is also more efficient for EPA staff and allows them to focus on the substantive review rather than drafting and implementing several medium term extensions. The 12-month extension also provides time for EPA to consider revisions to the certification rule based on input received through the Regulatory Reform Agenda efforts.

Comments—Administrative Procedures Act. Several comments argued that the May 15, 2017 rule violated the Administrative Procedures Act (APA) in several ways. First, commenters argued that the May 15 rule is a ''final rule'' that makes a significant amendment to a lawfully promulgated regulation without first proposing the change and seeking public comment. Second, commenters raised a number of concerns about the five-day comment period. Specifically, commenters argued that a delay of the effective date for 12 months is functionally a substantive amendment or rescission of the certification rule so the APA and FIFRA require a notice and comment period of at least 30 days. Commenters also stated that sections 553(d)(1) and (d)(3) of the APA are inapposite (not pertinent) as legal authority for dispensing with a ''full . . . comment period'' because these sections provide grounds to the generally applicable requirement that no final rule take effect sooner than 30 days after its publication but not the length of the comment period. Some commenters argued that the good cause exception to the APA's notice requirement in 5 U.S.C. 553(b)(B) is not relevant to the May 15, 2017 rule. Lastly, commenters disagreed with EPA's reasoning in the May 15, 2017 rule that a full 30-day comment period is impractical, unnecessary and contrary to the public interest.

EPA response—APA. The May 15, 2017 FR Notice was styled as a final rule to be consistent with standard procedures of the Office of the Federal Register, which require that rules that affect existing rules (in the case of rules that address changing the effective date of an existing rule) must appear in the ''Final Rules'' section of the **Federal Register**. See OFR Document Drafting Handbook (*https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf*) at section 3.1. Irrespective of the ''Final Rule'' caption, EPA considers the May 15 **Federal Register** Notice to have the effect of a proposed rule under the APA. This is clear from the phrase ''request for comments'' in the action line, as well as from the text of the FR Notice, where EPA expressly stated that it was ''proposing to further delay the effective date'' and requested comment on the proposed extension.

The Agency's implementation of this action with an abbreviated opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B), in that providing additional time for public comment is impracticable, unnecessary and contrary to the public interest. The delay of the effective date until May 22, 2018, is necessary to give Agency officials the opportunity for further review and consideration of the certification rule, consistent with the memorandum of the Assistant to the President and Chief of Staff, dated January 20, 2017, and the principles identified in the April 25, 2017 Executive Order ''Promoting Agriculture and Rural Prosperity in America.'' Given the imminence of the certification rule effective date, allowing a longer period for comment on this delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

The 90-day comment period for the 2015 proposed rule, combined with EPA's extensive stakeholder outreach, provided EPA with robust public comment regarding the risks and benefits associated with the January 4, 2017 certification rule. Inasmuch as there was already a robust public comment on the merits of the certification rule, the narrow issue of when the rule should become effective could reasonably be addressed in a short period of time. If EPA had not shortened the comment period to five days, the January 4, 2017 certification rule would have gone into effect. It would have caused unnecessary confusion and disruption to certifying authorities,

pesticide safety education programs, pesticide applicators and other stakeholders for the certification rule to go into effect and then potentially be substantially revised or repealed following a substantive review.

Comments—FIFRA. Some commenters argued that the May 15, 2017 rule violates FIFRA, which requires rules to be reviewed by the U.S. Department of Agriculture and the FIFRA Scientific Advisory Panel. FIFRA also requires a 60-day effective date and requires EPA to transmit a copy of the final rule to Congress at the beginning of this 60-day period.

EPA response—FIFRA. EPA disagrees that the proposed extension of the effective date of the certification rule violates FIFRA. EPA is issuing this extension of the effective date of the certification rule as an APA rule and not a FIFRA rule because today's rule is only changing the effective date of a final rule that had not become effective.

Comments—Endangered Species Act. A few commenters argued that the May 15, 2017 rule violates the Endangered Species Act. Section 7 of the ESA requires federal agencies to consult with the Fish and Wildlife Service and the National Marine Fisheries Service unless EPA determined that its extension of the effective date has ''no effect'' on threatened and endangered species and their designated critical habitat.

EPA response—Endangered Species Act. EPA believes that its actions with respect to deferring the implementation of this rule are not inconsistent with its obligations under the Endangered Species Act.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under RFA, 5 U.S.C. 601 *et seq.*

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 (65 FR 67249, November 9, 2000).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action would not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 171

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Dated: May 26, 2017.

Wendy Cleland-Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–11458 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0236; FRL–9954–47]

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

Correction

In rule document 2016–29882, appearing on pages 93824–93831, in the Issue of Thursday, December 22, 2016, make the following correction:

On page on page 93827, in the second column, in the last line ''(≤15% CT)'' should be ''(>15% CT)''.

[FR Doc. C2–2016–29882 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R08–RCRA–2016–0505; FRL–9962–18–Region 8]

Approval of Alternative Final Cover Request for Phase 2 of the City of Wolf Point, Montana, Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and

operated by the City of Wolf Point, Montana, on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana.

DATES: This rule is effective on August 1, 2017 without further notice, unless the EPA receives relevant adverse comment by July 3, 2017. If the EPA receives relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2016–0505, by one of the following methods:

- *Online: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.*
- *Email: roach.michael@epa.gov.*
- *Mail:* Michael Roach, Environmental Protection Agency Region 8, Mail Code 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202.
- *Hand delivery:* Environmental Protection Agency Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. Such deliveries are only accepted during normal hours of operation, which are Monday through Friday from 8:00 a.m. until 4:30 p.m.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2016–0505. The EPA may publish any comment received to its public docket, without change and may be available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or by email. The *http://regulations.gov* Web site is an ''anonymous'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA rather than going through *http://www.regulations.gov,* your email address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Roach, Resource Conservation and Recovery Program, Environmental Protection Agency Region 8, Mail Code: 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202; telephone number: (303) 312–6369; email address: *roach.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no relevant adverse comment. However, in the ''Proposed Rules'' section of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the alternative final cover request for Phase 2 of the City of Wolf Point, Montana, landfill if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. What did EPA approve?

After completing a review of the City of Wolf Point's final site-specific flexibility request, dated May 1, 2011, and the amendments to that request, dated February 23, 2015, and February 9, 2016, the EPA approves Wolf Point's site-specific flexibility request to install an alternative final cover that varies from the final closure requirements of 40 Code of Federal Regulations (CFR) 258.60(a), but meets the criteria at 40 CFR 258.60(b). This approval applies to the 3.5 acres of the landfill that have not been previously closed.

III. What is a site-specific flexibility request?

Under Sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA established revised minimum federal criteria for MSWLFs, including landfill location restrictions, operating standards, design standards and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA Section 4005(c), states are required to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators, and the EPA determines whether the program is adequate to ensure that facilities will comply with the revised criteria.

The MSWLF criteria are at 40 CFR part 258. These regulations are self-implementing and apply directly to owners and operators of MSWLFs. For many of these criteria, 40 CFR part 258 includes a flexible performance standard as an alternative to the self-implementing regulation. The flexible standard is not self-implementing, and use of the alternative standard requires approval by the Program Director of a state with an EPA-approved program.

Because the EPA's approval of a state program does not extend to Indian country, as that term is defined at 18 United States Code (U.S.C.) 1151, owners and operators of MSWLF units located in Indian country cannot take advantage of the flexibilities available to those facilities subject to an approved state program. However, the EPA has the authority under Sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules that may provide for use of alternative standards in Indian country. See *Yankton Sioux Tribe* v. *EPA,* 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps* v. *EPA,* 100 F.3d. 147 (D.C. Cir. 1996).

The regulation at 40 CFR 258.60(a) establishes closure criteria for MSWLF units that are designed to minimize infiltration and erosion. The regulation requires final cover systems to be designed and constructed to:

(1) Have a permeability of less than or equal to the permeability of any bottom

liner system or natural sub-soils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less, and

(2) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

The regulation at 40 CFR 258.60(b) allows for variances from these specified MSWLF closure criteria. Specifically, the rule allows for the Program Director of an approved state to approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of 40 CFR 258.60, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of 40 CFR 258.60.

IV. Overview of the City of Wolf Point's Site-Specific Flexibility Request and EPA's Action

The City of Wolf Point landfill is a MSWLF owned and operated by the City of Wolf Point on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana. The landfill site is approximately 25 acres in size and served approximately 10,000 people in Roosevelt County, including the City of Wolf Point and the City of Poplar. The landfill lies within the boundaries of the Fort Peck Reservation. The landfill itself consists of two phases, or units, used as the area's municipal landfill. Phase 1, constructed in 1960, was closed and covered in 1999. Phase 2 was constructed in 2000 and stopped receiving waste in August 2008.

On May 1, 2011, the City of Wolf Point submitted a site-specific flexibility request to the EPA Region 8 and the Assiniboine and Sioux Tribes for Phase 2 of the Wolf Point landfill. The request sought EPA approval for the use of an alternative final cover that differs from the final closure requirements of 40 CFR 258.60. This request applies only to Phase 2, the 3.5 acres of the landfill not previously closed.

Between May 1, 2011, and February 9, 2016, the City of Wolf Point made revisions to its request in response to concerns raised by the EPA Region 8 and the Assiniboine and Sioux Tribes. Today, the EPA is approving Wolf Point's site-specific flexibility request to install an alternative final landfill cover that meets the requirements of 40 CFR 258.60(b).

The EPA is basing its approval on a number of factors, including final cover design, numerical soil modeling and site-specific climatic and soils data. The numerical soil modeling consisted of a sensitivity analysis of the proposed evapotranspiration alternative final cover system under a range of climate and vegetative growth conditions, compared to the performance of the standard final cover prescribed in 40 CFR 258.60. The EPA has determined that the evapotranspiration cover will perform equivalently to the standard prescriptive cover in 40 CFR 258.60(a) in preventing the movement of leachate through the system and erosion caused by wind and water.

As part of this approval, the EPA is requiring that upon finalization, the City of Wolf Point submit a complete set of final cover plans and specifications, including a construction quality assurance/quality control plan and closure/post-closure plan to the EPA. The EPA further requires the City of Wolf Point achieve revegetation rates of greater than 75 percent on Phase 2 of the closed landfill by the end of the third year after revegetation. Finally, the EPA requires that the City of Wolf Point maintain all documentation demonstrating compliance with plans and specifications, and 40 CFR 258.60(a)(1), (2), and (3) in the landfill operating record.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not a ''significant regulatory action'' and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this rule 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, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule is also not subject to Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is the EPA's conservative analysis of the potential risks posed by the City of Wolf Point's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), calls for the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.'' The EPA has concluded that this action may have Tribal implications because it is directly applicable to a facility operating on the Assiniboine and Sioux Tribes' Fort Peck Reservation. However, this determination will neither impose substantial direct compliance costs on Tribal governments nor preempt Tribal law. This determination to approve the City of Wolf Point's application will affect only the operation of the Wolf Point landfill.

The EPA consulted with the Assiniboine and Sioux Tribes early in the process of making this determination to approve Wolf Point's alternative final cover request so that the Tribes had the opportunity to

provide meaningful and timely input. Between May 1, 2011, and February 9, 2016, technical issues were raised and addressed by the EPA concerning the City of Wolf Point's proposal. The EPA's consultation with the Tribes culminated in a May 19, 2016 letter from the Tribes in which they stated that they have no issues with the Wolf Point proposal. The EPA specifically solicits any additional comment on this determination from Tribal officials of the Assiniboine and Sioux Tribes.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (*e.g.,* materials specification, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The technical standards included in the application were proposed by the City of Wolf Point. Given the EPA's obligations under Executive Order 13175 (see above), the agency has, to the extent appropriate, applied the standards established by Wolf Point and accepted by the Tribes. In addition, the agency evaluated the proposal's design against the engineering design and construction criteria contained in the EPA draft guidance document, ''Water Balance Covers for Waste Containment: Principles and Practice (2009).''

Authority: Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6907, 6912, 6944, and 6949a.

List of Subjects in 40 CFR Part 258

Environmental protection, Incorporation by reference, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 17, 2017.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

For the reasons stated in the preamble, 40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), 6949a(c) and 6981(a).

Subpart F—Closure and Post-Closure Care

■ 2. Section 258.62 is amended by adding paragraph (c) to read as follows:

* * * * *

§ 258.62 Approval of site-specific flexibility requests in Indian country.

(c) City of Wolf Point Municipal Landfill final cover requirements. Paragraph (c) of this section applies to the City of Wolf Point Landfill Phase 2, a municipal solid waste landfill owned and operated by the City of Wolf Point on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana. The facility owner and/or operator may close the facility in accordance with this application, including the following activities more generally described as follows:

(1) The owner and operator may install an evapotranspiration system as an alternative final cover for the 3.5-acre Phase 2 area.

(2) The final cover system shall consist of a 4-foot-thick multi-layer cover system comprised of the following from bottom to top: A 12-inch intermediate layer, a 24-inch native silty-clay till layer, and a 12-inch native topsoil layer, as well as seeding and erosion control.

(3) The final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in § 258.60(a)(1) and (a)(2), and provide an equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(4) In addition to meeting the specifications of ''The City of Wolf Point Landfill License #3—Phase 2 Alternative Final Cover Demonstration (Revised)'' application of February 9, 2016, the owner and operator shall:

(i) At finalization, submit to the EPA for approval final cover plans and specifications, including the final Construction Quality Assurance/Quality Control Plan and final Closure/Post-Closure Plan; and

(ii) Achieve re-vegetation rates greater than 75% by the end of the third year after revegetation.

(5) The owner and operator shall place documentation demonstrating compliance with the provisions of this section in the operating record.

(6) All other applicable provisions of 40 CFR part 258 remain in effect.

[FR Doc. 2017–11227 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket 80–286; FCC 17–55]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission extends the existing freeze of jurisdictional separations rules. The current extension allows the Commission, in cooperation with the Federal-State Joint Board, to consider further changes to the separations process in light of changes taking place in the telecommunications market place. The freeze also serves to ease the burdens of regulatory compliance and uncertainty for Local Exchange Carriers.

DATES: Effective June 2, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rhonda Lien, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–1540 or at *Rhonda.Lien@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 17–55 released May 15, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The full-text copy of this document can also be found at the following internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-55A1.docx.*

Synopsis

I. Background

1. Historically, incumbent LECs (ILECs) were subject to rate-of-return rate regulation at both the federal and state levels. After the adoption of the 1996 Telecommunications Act (1996 Act), the Commission initiated a proceeding to comprehensively reform the part 36 separations procedures to ensure compliance with the objectives of the 1996 Act, and to address statutory, technological, and market changes in the telecommunications industry.

2. Jurisdictional separations is the third step in a four-step regulatory process that begins with a carrier's accounting system and ends with the establishment of tariffed rates for the ILEC's interstate and intrastate regulated services. First, carriers record their costs

into various accounts in accordance with the Uniform System of Accounts for Telecommunications Companies (USOA) prescribed by part 32 of our rules. Second, carriers divide the costs in these accounts between regulated and nonregulated activities in accordance with part 64 of our rules. This division ensures that the costs of nonregulated activities will not be recovered in regulated interstate service rates. Third, carriers separate the regulated costs between the intrastate and interstate jurisdictions in accordance with our part 36 separations rules. In certain instances, costs are further disaggregated among service categories. Finally, carriers apportion the interstate regulated costs among the interexchange services and rate elements that form the cost basis for their exchange access tariffs. For carriers subject to rate-of-return regulation, this apportionment is performed in accordance with part 69 of our rules.

3. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative, technological, and market changes warranted comprehensive reform of the separations process. In the *2001 Separations Freeze Order,* the Commission froze, on an interim basis, the part 36 jurisdictional separation rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. Specifically, the Commission adopted a freeze of all part 36 category relationships and allocation factors for price cap carriers, and a freeze of all allocation factors for rate-of-return carriers. The Commission concluded that several issues, including the separations treatment of Internet traffic, should be addressed in the context of comprehensive separations reform. The Commission further concluded that the freeze would provide stability and regulatory certainty for ILECs by minimizing any impacts on separations results that might occur due to circumstances not contemplated by the Commission's part 36 rules, such as growth in local competition and new technologies. The Commission also found that a freeze of the separations process would reduce regulatory burdens on ILECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.

4. Price cap carriers have since received conditional forbearance from the part 36 jurisdictional separations rules. As a result, the freeze primarily impacts rate-of-return carriers who were only required to freeze their allocation factors, but were given the option of also freezing their category relationships at the outset of the freeze. Those that have chosen to freeze relationships calculate: (1) The relationships between categories of investment and expenses within part 32 accounts; and (2) the jurisdictional allocation factors, as of a specific point in time, and then lock or ''freeze'' those category relationships and allocation factors in place for a set period of time. The carriers use the ''frozen'' category relationships and allocation factors for their calculations of separations results and therefore are not required to conduct separations studies for the duration of the freeze.

5. Over time, the Commission has repeatedly extended the freeze, which is currently set to expire on June 30, 2017. The Commission has consistently consulted with the Joint Board about separations reform, pursuant to the Act's requirement that the Commission refer to the Joint Board proceedings regarding ''the jurisdictional separations of common carrier property and expenses between interstate and intrastate operations.'' The Joint Board recommended the initial freeze and has made a number of recommendations to the Commission about how best to proceed with reform of the separations rules. The state members of the Joint Board made their most recent recommendations in 2011.

6. Since the Joint Board's recommendations, the Commission comprehensively reformed its universal service and intercarrier compensation systems and proposed additional reforms. On March 30, 2016, the Commission adopted the *Rate-of-Return Reform Order,* which instituted significant reforms to the rules governing the provision of universal service support to rate-of-return LECs. On February 23, 2017, we completed our review of the part 32 Uniform System of Accounts (USOA) rules and streamlined various accounting requirements for all carriers and eliminated certain accounting requirements for large carriers.

7. On March 20, 2017, in a Further Notice of Proposed Rulemaking (*2017 FNPRM*), 82 FR 16152–01, April 3, 2017, we proposed and sought comment on a further eighteen month extension of the separations freeze while we continue to work with the Joint Board. Comments were received from eight parties. On April 24, 2017, the Joint Board signaled its intent to move forward by releasing two public notices seeking comment on issues related to comprehensive permanent separations reform, and separations reform in light of recent reforms to part 32 rules. As we explained in the *2017 FNPRM,* we anticipate that the Joint Board will meet in July 2017 to consider reform of the separations process and we expect to receive the Joint Board's recommendations for comprehensive separations reform within nine months thereafter.

II. Discussion

8. To allow us to move forward with orderly reform of the separations rules, based on the record before us, we extend through December 31, 2018, the freeze on part 36 category relationships and jurisdictional cost allocation factors that the Commission adopted in the *2001 Separations Freeze Order.* As a result of the extension, price cap carriers that have not availed themselves of conditional forbearance from the part 36 rules will use the same relationships between categories of investment and expenses within part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers will use the same frozen jurisdictional allocation factors, and will, absent a waiver, use the same frozen category relationships if they had opted in 2001 to freeze those.

9. The issues involved with modernizing separations are broad and complex. As commenters point out, the policy changes the Commission has adopted in recent years, particularly those arising from the Commission's fundamental reform of the high cost universal service support program, the intercarrier compensation systems, and the part 32 accounting rules, will significantly affect our analysis of interim and comprehensive separations reform, as well as that of the Joint Board. Extending the freeze provides time for the Joint Board to consider the impact of our recent reforms on the separations rules and gives us the time necessary to tackle rule changes informed by the Joint Board's recommendations. We strongly urge interested parties to provide detailed and constructive feedback about how best to revise or eliminate the separations process as we work towards separations reform with the Joint Board.

10. We agree with those commenters that argue that allowing the existing freeze to lapse and frozen separations rules to be reinstated during the pendency of our work with the Joint Board would create undue instability and administrative burdens on affected carriers. As WTA has explained, reinstating these long-unused separations rules, many of which are

now outmoded, would not only require substantial training and investment by rural LECs, but also could cause significant disruptions in their regulated rates, cost recovery and other operating conditions. If we were to allow the freeze to expire, carriers would have to reinstitute their former separations processes, even those that no longer have the necessary employees and systems in place to comply with the separations rules. Many carriers likely would have to hire or reassign and train employees and redevelop systems for collecting and analyzing the data necessary to perform separations in the prior manner. Requiring carriers to reinstate their separations systems ''would be unduly burdensome when there is a significant likelihood that there would be no lasting benefit to doing so.''

11. Two commenters, a group of concerned individuals called the Irregulators and Terral Telephone Company, Inc. (Terral), oppose the extension of the freeze. According to the Irregulators, the freeze is being used to deliberately hide ''massive financial cross subsidies and data manipulation.'' However, the evidence offered does not support this claim. We thus find the harm alleged by the Irregulators to be speculative and insufficient to outweigh the clear benefits that will result from granting a further extension. Terral opposes the extension as it applies to Terral and then uses its comments to ask the Commission to grant its pending petition for waiver of the categories of frozen separations. We decline, however, to substantively address individual requests for relief or a waiver of the separations rules in this Order as those requests are beyond the scope of this proceeding. We do welcome the input of these commenters as we move toward full consideration of how best to reform the separations rules and note that the decision to extend the freeze does not affect the Commission's ability to address pending or future waiver petitions.

12. Separately, we deny the request of USTelecom to modify frozen category relationships for carriers electing the Alternative Connect America Cost Model and to make other changes to the separations process. These issues fall within the pending referral to the Joint Board and may be addressed in the Joint Board's recommended decision. We will therefore not grant USTelecom's request here.

13. With regard to the length of the extension, the majority of commenters support extending the freeze for at least eighteen months. Some argue that the freeze should be longer, and should be tied to the completion of a comprehensive rulemaking. Some stakeholders have expressed concern about the amount of time needed to operationalize any changes we ultimately make to the separations rules. While those concerns are legitimate, they are premature at this point in the process, and would be more appropriately raised and addressed when considering the implementation of any reform measures as part of the on-going, comprehensive rulemaking proceeding.

14. We find that extending the freeze by eighteen months, the length of time proposed in the *2017 FNPRM,* is appropriate. We fully agree with NASUCA that the freeze should not continue indefinitely. While we recognize that an eighteen-month freeze extension is shorter than those the Commission previously adopted, as we explained in the *2017 FNPRM,* ''now is the time to address the separations rules.'' We are committed to moving this process forward and believe that eighteen months is a sufficient amount of time to carefully consider the issues in the record and work with the Joint Board toward meaningful separations reform. We intend to work diligently with the Joint Board toward that goal.

III. Procedural Matters

15. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. As discussed above, in 2001 the Commission adopted a Joint Board recommendation to impose an interim freeze of the part 36 category relationships and jurisdictional cost allocation factors, pending comprehensive reform of the part 36 separations rules. The Commission ordered that the freeze would be in effect for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. On May 16, 2006, concluding that more time was needed to implement comprehensive separations reform, the Commission extended the freeze for three years or until such comprehensive reform could be completed, whichever came first. On May 15, 2009, the Commission extended the freeze through June 30, 2010; on May 24, 2010, extended the freeze through June 30, 2011; on May 3, 2011, extended the freeze through June 30, 2012; on May 8, 2012, extended the freeze through June 30, 2104; and on June 12, 2014, extending the freeze through June 30, 2017.

17. The purpose of the current extension of the freeze is to allow the Commission and the Joint Board additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry without creating the undue instability and administrative burdens that would occur were the Commission to eliminate the freeze.

18. Implementation of the freeze extension will ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. The effect of the freeze extension is to reduce a regulatory compliance burden for small incumbent LECs, by abating the aforementioned separations studies and providing these carriers with greater regulatory certainty. Therefore, we certify that the requirement of the report and order will not have a significant economic impact on a substantial number of small entities.

19. The Commission will send a copy of the report and order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the report and order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

20. *Paperwork Reduction Act Analysis.* This Report and Order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed information collection burden for small business

concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

22. *Effective Date.* We find good cause to make these rule changes effective June 2, 2017. As explained above, the current freeze is scheduled to expire on June 30, 2017. To avoid unnecessary disruption to carriers subject to these rules, we preserve the status quo by making the extension of the freeze effective before the scheduled expiration date.

IV. Ordering Clauses

23. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 201–05, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 215, 218, 220, and 410, that this Report and Order is *adopted.*

24. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

25. *It is further ordered,* pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), and sections 1.4(b)(1) and 1.427(b) of the Commission's rules, 47 CFR 1.4(b)(1), 1.427(b), that this Report and Order *shall be effective* June 2, 2017.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410 and 1302 unless otherwise noted.

§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.157, 36.191, 36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, and 36.382 [Amended]

■ 2. In 47 CFR part 36, remove the date ''June 30, 2017'' and add, in its place, the date ''December 30, 2018'' in the following places:

■ a. Section 36.3(a) through (c), (d) introductory text, and (e);
■ b. Section 36.123(a)(5) and (6);
■ c. Section 36.124(c) and (d);
■ d. Section 36.125(h) and (i);
■ e. Section 36.126(b)(6), (c)(4), (e)(4), and (f)(2);
■ f. Section 36.141(c);
■ g. Section 36.142(c);
■ h. Section 36.152(d);
■ i. Section 36.154(g);
■ j. Section 36.155(b);
■ k. Section 36.156(c);
■ l. Section 36.157(b);
■ m. Section 36.191(d);
■ n. Section 36.212(c);
■ o. Section 36.214(a);
■ p. Section 36.372;
■ q. Section 36.374(b) and (d);
■ r. Section 36.375(b)(4) and (5);
■ s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);
■ t. Section 36.378(b)(1);
■ u. Section 36.379(b)(1) and (2);
■ v. Section 36.380(d) and (e);
■ w. Section 36.381(c) and (d); and
■ x. Section 36.382(a).

[FR Doc. 2017–11418 Filed 6–1–17; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 82, No. 105
Friday, June 2, 2017

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1564]

RIN 7100 AE 78

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule, request for comment.

SUMMARY: The Board is proposing to amend Regulation CC to address situations where there is a dispute as to whether a check has been altered or is a forgery, and the original paper check is not available for inspection. The proposed rule would adopt a presumption of alteration for any dispute over whether the dollar amount or the payee on a substitute check or electronic check has been altered or whether the substitute check or electronic check is derived from an original check that is a forgery. This rule is intended to provide clarity as to the burden of proof in these situations.

DATES: Comments must be submitted by August 1, 2017.

ADDRESSES: You may submit comments, identified by Docket No. R–1564 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.*
- *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:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available on the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, except as necessary for technical reasons. Accordingly, your 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 Street NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Clinton N. Chen, Attorney (202/452–3952), Legal Division; or Ian C.B. Spear, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Congress enacted the Expedited Funds Availability Act of 1987 (EFA Act) to provide prompt funds availability for deposits in transaction accounts and to foster improvements in the check collection and return processes. Section 609(c) authorizes the Board to regulate any aspect of the payment system and any related function of the payment system with respect to checks in order to carry out the provisions of the EFA Act.[1]

Regulation CC implements the EFA Act. Subpart C of Regulation CC implements the EFA Act's provisions regarding forward collection and return of checks.

II. UCC Provisions Regarding Altered and Forged Checks

Under the Uniform Commercial Code (UCC), an alteration is a change to the terms of a check that is made after the check is issued that modifies an obligation of a party by, for example, changing the payee's name or the amount of the check.[2] By contrast, a forgery is a check on which the signature of the drawer (*i.e.,* the account-holder at the paying bank) was made without authorization at the time of the check's issuance.[3] In general, under UCC 4–401, the paying bank may charge the drawer's account only for checks that are properly payable.[4] Neither altered checks nor forged checks are properly payable. In the case of an altered check under the UCC, the banks that received the check during forward collection, including the paying bank, have warranty claims against the banks that transferred the check (*e.g.,* a collecting bank or the depositary bank). In the case of a forged check, however, the UCC places the responsibility on the paying bank for identifying the forgery.[5] Therefore, the depositary bank typically bears the loss related to an altered check, whereas the paying bank bears the loss related to a forged check.

These provisions of the UCC reflect the long-standing rule set forth in *Price* v. *Neal* that the paying bank must bear the loss when a check it pays is not properly payable by virtue of the fact that the drawer did not authorize the item.[6] The *Price* v. *Neal* rule reflects the assumption that the paying bank, rather than the depositary bank, is in the best position to judge whether the drawer's signature on a check is the authorized signature of the account-holder. By contrast, the depositary bank is arguably in a better position than the paying bank to inspect the check at the time of deposit and detect an alteration to the face of the check, to determine that the amount of the check is unusual for the depositary bank's customer, or to otherwise take responsibility for the items it accepts for deposit.

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[1] EFA Act section 609(c)(1) states that ''[i]n order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and (B) any related function of the payment system with respect to checks.'' 12 U.S.C. 4008(c)(1).

[2] UCC 3–407. The UCC is a uniform body of laws promulgated by the American Law Institute and the Uniform Law Commission, which may be enacted by state legislatures. Article 3 addresses payment by check and other negotiable instruments while Article 4 addresses bank deposits.

[3] The term ''forgery'' is not defined in the UCC. However, the term ''unauthorized signature'' is defined as ''a signature made without actual, implied, or apparent authority'' and ''includes a forgery.'' UCC 1–201(41).

[4] The term ''bank'' as used in this notice and in Regulation CC (12 CFR 229.2(e)) includes a commercial bank, savings bank, savings and loan association, credit union, and a U.S. agency or branch of a foreign bank.

[5] The presenting bank warrants to the paying bank only that it has no knowledge of an unauthorized drawer's signature. *See* UCC 3–417 and 4–208.

[6] *Price* v. *Neal,* 97 Eng. Rep. 871 (K.B. 1762).

III. Proposed Presumption of Alteration

Regulation CC does not currently address whether a check should be presumed to be altered or forged in cases of doubt. For example, an unauthorized payee name could result from an alteration of the original check that the drawer issued, or from the creation of a forged check bearing the unauthorized payee name and an unauthorized/forged drawer's signature. Courts have reached opposite conclusions as to whether a paid, but fraudulent, check should be presumed to be altered or forged in the absence of evidence (such as the original check).[7] Since the time of these decisions, the check collection system has become overwhelmingly electronic, and the number of instances in which the original paper check is available for inspection in such cases will be quite low.[8] Unlike the 2006 court cases, where the paying bank received and destroyed the original check, in today's check environment the original check is typically truncated by the depositary bank or a collecting bank before it reaches the paying bank. In light of requests from members of the industry, the Board requested comment on the adoption of an evidentiary presumption in Regulation CC.[9] Specifically, the Board requested comment on whether it should adopt an evidentiary presumption, and if yes, whether the check should be presumed to be altered or forged in cases of doubt.[10] The Board also requested comment on whether banks are aware of or have information pertaining to whether forged checks are a more common method of committing fraud than altering the payee name or amount on the check.

The Board received four comments concerning the adoption of an evidentiary presumption.[11] All four, including a comment letter submitted by a group of institutions and trade associations, supported the adoption of an evidentiary presumption of alteration in the event that there is insufficient evidence to determine whether a particular check was altered or is a forged item. One commenter believed that a presumption of alteration (imposing the risk of loss on the depositary bank as described above) is appropriate in today's virtually all-electronic environment. The commenter reasoned that in today's environment the vast majority of checks are truncated by the depositary banks or their customers, the depositary bank has the option of retaining the original check, and if the depositary bank presents a substitute check, the paying bank does not have the right to demand presentment of the original check.

Based on these comments, the Board is proposing to adopt a presumption of alteration with respect to any dispute arising under federal or state law as to whether the dollar amount or the payee on a substitute check or electronic check has been altered or whether the substitute check or electronic check is derived from an original check that is a forgery. The Board requests comment on whether the presumption should also apply to a claim that the date was altered.

Under the proposed rule, the presumption of alteration may be overcome by a preponderance of evidence that the substitute check or electronic check accurately represents the dollar amount and payee as authorized by the drawer, or that the substitute check or electronic check is derived from an original check that is a forgery. The proposed rule would also state that the presumption of alteration shall cease to apply if the original check is made available for examination by all parties involved in the dispute. The Board requests comment on whether the presumption of alteration should apply if the bank claiming the presumption received and destroyed the original check.

The Board is also proposing accompanying commentary provisions to explain the operation of the rule, including clarification that the presumption does not alter the process by which a bank may seek to make a claim against another bank on a check that the bank alleges to be altered.

IV. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers an operational or legal change, if that change would have a direct and material adverse effect on the ability of other service providers to compete with the Federal Reserve in providing similar services due to legal differences or due to the Federal Reserve's dominant market position deriving from such legal differences. All operational or legal changes having a substantial effect on payments-system participants will be subject to a competitive-impact analysis, even if competitive effects are not apparent on the face of the proposal. If such legal differences exist, the Board will assess whether the same objectives could be achieved by a modified proposal with lesser competitive impact or, if not, whether the benefits of the proposal (such as contributing to payments-system efficiency or integrity or other Board objectives) outweigh the materially adverse effect on competition.[12]

The Board does not believe that the proposed amendments to Regulation CC will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services due to legal differences. The proposed amendments would apply to the Reserve Banks and private-sector service providers alike and would not affect the competitive position of private-sector presenting banks vis-à-vis the Reserve Banks.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by the OMB and determined that it contains no collections of information under the PRA.[13] Accordingly, there is no paperwork burden associated with the rule.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (the ''RFA'') (5 U.S.C. 601 *et seq.*) requires

[7] *See, e.g., Chevy Chase Bank* v. *Wachovia Bank, N.A.,* 208 Fed. App'x. 232, 235 (4th Cir. 2006) and *Wachovia Bank, N.A.* v. *Foster Bancshares, Inc.,* 457 F.3d 619 (7th Cir. 2006).

[8] For example, by the beginning of 2017 the Federal Reserve Banks received over 99.99 percent of checks electronically from 99.06 percent of routing numbers and presented over 99.99 percent of checks electronically to over 99.76 percent of routing numbers. As of the same time, the Federal Reserve Banks received 99.63 percent of returned checks electronically from over 99.37 percent of routing numbers and delivered 99.41 percent of returned checks electronically to 92.84 percent of routing numbers.

[9] Although the Board did not raise the issue, two commenters requested that the Board address the uncertainty caused by the divergent appellate court decisions in response to a 2011 proposed rulemaking. 76 FR 16862 (March 25, 2011). The Board describes these comments in greater detail as part of its 2014 proposal. 79 FR 6673, 6703 (Feb. 4, 2014).

[10] The Board believes that the substance of the UCC's loss-allocation framework for altered and forged checks, under which the depositary bank generally bears the loss for altered checks and the paying bank generally bears the loss for forged checks, continues to be appropriate in the current check-processing environment.

[11] The Board received an additional comment about the applicability of the UCC to alterations by persons other than the payee. The commenter did not address whether the Board should adopt an evidentiary presumption.

[12] Federal Reserve Regulatory Service, 7–145.2.

[13] *See* 44 U.S.C. 3502(3).

agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. In this case, the proposed rule would apply to all depository institutions. This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 in order for the Board to solicit comment on the effect of the proposal on small entities. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

The Board is proposing the foregoing amendments to Regulation CC pursuant to its authority under the EFA Act. The proposal addresses situations where there is a dispute as to whether a check has been altered or is a forgery, and the original paper check is not available for inspection. The check collection system has become overwhelmingly electronic, and the number of instances in which the original paper check will be available for inspection in such cases will be quite low. Under the UCC, the depositary bank typically bears the loss related to an altered check, whereas the paying bank bears the loss related to a forged check. The proposed rule would adopt a presumption of alteration with respect to any dispute as to whether the dollar amount or the payee on a substitute check or electronic check has been altered or whether the substitute check or electronic check is derived from an original check that is a forgery.

2. Small Entities Affected by the Proposed Rule

The proposed rule would apply to all depository institutions regardless of their size.[14] Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a ''small banking organization'' includes a depository institution with $550 million or less in total assets. Based on call report data as of December 2016, there are approximately 10,185 depository institutions that have total domestic assets of $550 million or less and thus are considered small entities for purposes of the RFA.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

A presumption of alteration shifts the burden to the bank that warrants that a check has not been altered, which could be a depositary bank or collecting bank. In order to overcome the proposed presumption of alteration, a depositary bank or collecting bank must prove by a preponderance of evidence that either the substitute check or electronic check accurately represents the dollar amount and payee as authorized by the drawer, or that the substitute check or electronic check is derived from an original check that is a forgery. Under the proposed rule, the presumption of alteration shall cease to apply if the original check is made available for examination by all parties involved in the dispute.

A depositary bank or collecting bank that destroys all original checks after truncation may incur additional risk, as it may not be able to overcome the presumption of alteration. The Board expects depositary banks and collecting banks to weigh the costs and benefits of destroying or retaining original checks, such as for large dollar amounts, so that the presumption of alteration will not apply.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

As mentioned above, courts have reached opposite conclusions as to whether, under the Uniform Commercial Code, a paid, but fraudulent, check should be presumed to be altered or forged in the absence of evidence, such as the original check. The proposal would resolve that discrepancy under the conditions described above. The Board knows of no other duplicative, overlapping, to conflicting Federal rules related to this proposal.

5. Significant Alternatives to the Proposed Rule

As discussed above, the Board requested comment as part of its 2014 Regulation CC proposal on whether it should adopt an evidentiary presumption, and if so, whether the check should be presumed to be altered or forged in cases of doubt.[15] All comments received supported the adoption of an evidentiary presumption of alteration. The Board welcomes comment on the impact of the proposed rule on small entities and any approaches, other than the proposed alternatives, that would reduce the burden on all entities, including small issuers.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 229 as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. In § 229.38, paragraph (i) is added to read as follows:

* * * * *

Subpart C—Collection of Checks

* * * * *

§ 229.38 Liability.

* * * * *

(i) *Presumption of Alteration.* (1) *Presumption.* Subject to paragraph (i)(2), the presumption in this paragraph applies with respect to any dispute arising under federal or state law as to whether—

(i) The dollar amount or the payee on a substitute check or electronic check has been altered or

(ii) The substitute check or electronic check is derived from an original check that is a forgery.

When such a dispute arises, there is a rebuttable presumption that the substitute check or electronic check contains an alteration of the dollar amount or the payee. The presumption of alteration may be overcome by proving by a preponderance of evidence that either the substitute check or electronic check accurately represents the dollar amount and payee as authorized by the drawer, or that the substitute check or electronic check is derived from an original check that is a forgery.

(2) *Effect of producing original check.* If the original check made available for examination by all parties involved in the dispute, the presumption in paragraph (i)(1) shall no longer apply.

* * * * *

■ 3. In Appendix E to part 229, under ''XXIV. Section 229.38 Liabilities,'' add paragraph ''I. 229.38(i) Presumption of Alteration''

The addition reads as follows:

[14] The proposed rule would not impose costs on any small entities other than depository institutions.

[15] 79 FR 6673, 6703 (Feb. 4, 2014).

Appendix E to Part 229—Commentary

* * * * *

XXIV. Section 229.38 Liability

* * * * *

I. 229.38(i) Presumption of Alteration

1. This paragraph establishes an evidentiary presumption of alteration of a check when the original check has been converted to an image and only an electronic check or a substitute check is available for inspection. This provision does not alter the transfer and presentment warranties under the UCC that allocate liability among the parties to a check transaction with respect to an altered or forged item. The UCC or other applicable check law continues to apply with respect to other rights, duties, and obligations related to altered or forged checks.

2. The presumption of alteration applies when the original check is unavailable for review by the banks in context of the dispute. If the original check is produced, through discovery or other means, and is made available for examination by all the parties, the presumption no longer applies. There is no presumption of alteration as between two banks that exchange an original check.

By order of the Board of Governors of the Federal Reserve System, May 26, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–11380 Filed 6–1–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0498; Directorate Identifier 2016–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2015–15–10, for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2015–15–10 currently requires repetitive inspections of the trimmable horizontal stabilizer actuator (THSA) for damage, and replacement if necessary; and replacement of the THSA after reaching a certain life limit. Since we issued AD 2015–15–10, an additional life limit for the THSA has been established, based on flight cycles. In addition, the THSA manufacturer has issued service information which, when accomplished, increases the life limit of the THSA. This proposed AD would require repetitive detailed inspections of certain THSAs, and related investigative and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

For United Technologies Corporation Aerospace Systems (UTAS) service information identified in this NPRM, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; phone: +44 (0) 1902 624938; fax: +44 (0) 1902 788100; email: *techpubs.wolverhampton@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.*

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–2017–0498; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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–2017–0498; Directorate Identifier 2016–NM–175–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 July 12, 2015, we issued AD 2015–15–10, Amendment 39–18219 (80 FR 43928, July 24, 2015) (''AD 2015–15–10''), for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2015–15–10 was prompted by reports of wear of the THSA. AD 2015–15–10 requires repetitive inspections of the THSA for damage, and replacement if necessary; and replacement of the THSA after reaching a certain life limit. We issued AD 2015–15–10 to detect and correct wear on the THSA, which would reduce the remaining life of the THSA, possibly resulting in premature failure and consequent reduced controllability of the airplane.

Since we issued AD 2015–15–10, an additional life limit for the THSA has been established, based on flight cycles. In addition, the THSA manufacturer has issued service information which, when accomplished, increases the life limit of the THSA.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0184, dated September 13, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model

A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

In the frame of the A320 Extended Service Goal (ESG) project and the study on the Trimmable Horizontal Stabilizer Actuator (THSA), a sampling programme of in-service units was performed and several cases of wear at different THSA levels were reported.

This condition, if not detected and corrected, would reduce the remaining life of the THSA, possibly resulting in premature failure and consequent reduced control of the aeroplane.

Prompted by these findings, Airbus issued Service Bulletin (SB) A320–27–1227 to provide THSA inspection instructions. Consequently, EASA issued AD 2014–0011 (later revised) [which corresponds to AD 2015–15–10] to require repetitive inspections of the THSA [and related investigative and corrective actions] and to introduce a life limit for the THSA, based on flight hours (FH).

Since EASA AD 2014–0011R1 was issued, an additional life limitation has been established, based on flight cycles (FC). Furthermore, United Technologies Corporation Aerospace Systems (UTAS), the THSA manufacturer, issued an SB which, after accomplishment on THSA, increases the life limit of the THSA.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0011R1, which is superseded, and introduces an additional FC life limit for the affected THSA. This [EASA] AD also provides a revised life limit for the THSA after UTAS SB accomplishment on that THSA.

The required action is repetitive special detailed inspections of the THSA. The optional terminating action is overhaul of the THSA. The related investigative action is a spectrometric analysis of the oil drained from the THSA gearbox. The corrective action is replacement of a THSA with a serviceable THSA.

The compliance time for the related investigative and corrective actions varies depending on the findings, and ranges from before further flight to 4 months or between 1,000 and 1,250 flight hours since the first THSA oil drain.

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–2017–0498.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016. This service information describes procedures for repetitive special detailed inspections for wear of the THSA, and related investigative and corrective actions.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 1,182 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
Inspections	6 work-hours × $85 per hour = $510 per inspection cycle.	$0	$510 per inspection cycle.	$602,820 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the spectrometric analysis of the oil drained from the THSA gearbox. We estimate the following costs to do any necessary replacements or overhauls that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements or overhauls:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of THSA (retained from AD 2015–15–10).	11 work-hours × $85 per hour = $935	$240,000	$240,935
Overhaul of THSA (new proposed action)	66 work-hours × $85 per hour = $5,610	115,000	120,610

Authority for This Rulemaking

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

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

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) 2015–15–10, Amendment 39–18219 (80 FR 43928, July 24, 2015), and adding the following new AD:

Airbus: Docket No. FAA–2017–0498; Directorate Identifier 2016–NM–175–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

This AD replaces AD 2015–15–10, Amendment 39–18219 (80 FR 43928, July 24, 2105) (''AD 2015–15–10'').

(c) Applicability

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

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

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

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

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

(d) Subject

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

(e) Reason

This AD was prompted by reports of wear at different levels in the trimmable horizontal stabilizer actuator (THSA). We are issuing this AD to detect and correct wear of the THSA, which could reduce the remaining life of the THSA, possibly resulting in premature failure and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Serviceable THSA Definition

For the purposes of this AD, a serviceable THSA is a THSA that does not exceed the life limits as identified in table 1 to paragraphs (g) and (j) of this AD.

TABLE 1 TO PARAGRAPHS (g) AND (j) OF THIS AD—THSA LIFE LIMITS

Configuration, based on service bulletin (SB) embodiment	Compliance time (whichever occurs first)
THSA on which United Technologies Corporation Aerospace Systems (UTAS) SB 47145–27–19 has not been embodied.	Before exceeding 67,500 flight hours (FH) since first installation on an airplane, or before exceeding 48,000 flight cycles (FC) since first installation on an airplane.
THSA on which UTAS SB 47145–27–19 has been embodied	Before exceeding 52,500 FH after embodiment of UTAS SB 47145–27–19 on an airplane, without exceeding 120,000 FH since first installation on an airplane; or before exceeding 27,000 FC after embodiment of UTAS SB 47145-27-19 on an airplane, without exceeding 75,000 FC since first installation on an airplane.

(h) Repetitive Inspection and Related Investigative Actions

For any airplane on which UTAS Service Bulletin 47145–27–19 has not been embodied: Before the THSA exceeds 48,000 flight hours or 30,000 flight cycles, whichever occurs first since first installation on an airplane, do a special detailed inspection of the THSA and do all applicable related investigative actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016. Do all applicable related investigative actions at the applicable times specified in paragraph 1.E., ''Compliance'' of Airbus Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016. Repeat the inspections thereafter at intervals not to exceed 24 months.

(i) Corrective Action

If, during any inspection required by paragraph (h) of this AD, any finding as described in the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016, is identified: At the applicable time (depending on the applicable finding) specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016, replace the THSA with a serviceable THSA, as specified in paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016.

(j) THSA Replacement

Within the applicable compliance time specified in table 1 to paragraphs (g) and (j) of this AD, replace each THSA with a serviceable THSA, as specified in paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 03, dated April 29, 2016.

(k) Replacement THSA: No Terminating Action

Replacement of a THSA on an airplane, as required by paragraph (i) or (j) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD for that airplane, unless the THSA is overhauled as specified in the Accomplishment Instructions of UTAS Service Bulletin 47145–27–19 (*i.e.,* post-service bulletin).

(l) Optional Terminating Action: Overhaul of THSA

Accomplishment of a modification of an airplane by installing a THSA that has been overhauled as specified in UTAS Service Bulletin 47145–27–19 constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD, provided that, following modification, no THSA is reinstalled on the airplane unless it has been overhauled as specified in UTAS Service Bulletin 47145–27–19.

(m) Replacement THSA Equivalency

As of the effective date of this AD: A THSA that has been repaired in shop as specified in UTAS Component Maintenance Manual 27–44–51 is acceptable for compliance with the initial inspection required by paragraph (h) of this AD.

(n) Parts Installation Limitation

As of the effective date of this AD, do not install on any airplane a THSA unless it is a serviceable THSA as specified in paragraph (g) of this AD.

(o) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using any of the service information specified in paragraphs (o)(1), (o)(2), or (o)(3) of this AD.

(1) Airbus Service Bulletin A320–27–1227, dated July 1, 2013, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013, which was incorporated by reference in AD 2015–15–10.

(3) Airbus Service Bulletin A320–27–1227, Revision 02, dated February 2, 2015, which is not incorporated by reference in this AD.

(p) 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 manager of the International Branch send it to the attention of the person identified in paragraph (q)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0184, dated September 13, 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–2017–0498.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(4) For UTAS service information in this AD, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; phone: +44 (0) 1902 624938; fax: +44 (0) 1902 788100; email: *techpubs.wolverhampton@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.*

Issued in Renton, Washington, on May 17, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–10607 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0512; Directorate Identifier 2017–NM–031–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of failures of the landing gear alternate-extension system. This proposed AD would require replacement of certain nose landing gear and main landing gear electro-mechanical actuators. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone: 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–2017–0512; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0512; Directorate Identifier 2017–NM–031–AD'' at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2017–08, dated March 8, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

Malfunctions of the landing gear Alternate-Extension System (AES) have been experienced. Failure of the landing gear AES could prevent the landing gear from extending in the case of a failure of the primary landing gear extension system.

This [Canadian] AD is issued to mandate the replacement of the [nose landing gear] NLG and [main landing gear] MLG [electro-mechanical actuators] EMA P/Ns BA698–85006–1 and BA698–85007–1.

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–2017–0512.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–32–047, Revision A, dated December 5, 2016. The service information describes procedures for replacing certain nose landing gear and main landing gear electro-mechanical actuators. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 39 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
Replacement	4 work-hours × $85 per hour = $340	Not available	$340	$13,260

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2017–0512; Directorate Identifier 2017–NM–031–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category, serial numbers 19001 through 19039 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by failures of the landing gear alternate-extension system (AES). We are issuing this AD to prevent failure of the landing gear AES and consequent landing with some or all of the landing gear not extended.

(f) Compliance

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

(g) Replacement

Within 1,200 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace the nose landing gear (NLG) and main landing gear (MLG) electro-mechanical actuators (EMA) having part numbers (P/Ns) BA698–85006–1 and BA698–85007–1 with P/Ns BA698–85006–3 and BA698–85007–3, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–047, Revision A, dated December 5, 2016 (''670BA–32–047, RA''). Where 670BA–32–047, RA, instructs operators to contact Bombardier if it is not possible to complete all the instructions in 670BA–32–047, RA, because of the configuration of the airplane, this AD requires that any deviation from the instructions provided in 670BA–32–047, RA, must be approved as an alternative method of compliance (AMOC) under the provisions of paragraph (j)(1) of this AD.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an NLG or MLG EMA having P/N BA698–85006–1 or BA698–85007–1, on any airplane.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–32–047, dated February 28, 2014.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the 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:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2017–08, dated March 8, 2017, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0512.

(2) For more information about this AD, contact Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

(3) 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 1–866–538–1247 or direct-dial telephone: 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 May 18, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11005 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0503; Directorate Identifier 2017–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes. This proposed AD was prompted by reports of cracking of various structures in the bulkhead. This proposed AD would require an inspection for cracking in these structures, and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0503.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0503; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@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–2017–0503; Directorate Identifier 2017–NM–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We have received reports of cracking of various structures in The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), and DC–9–83 (MD–83) airplanes at the cant station 1463 bulkhead, and the Model DC–9–87 (MD–87) airplanes at the cant station 1254 bulkhead. One incident of cracking was discovered during a heavy maintenance visit on an airplane with 63,480 total flight hours, and 45,809 total flight cycles. The cracks were in the upper left area of the bulkhead, between longerons L–2 and L–3, in the frame web, horizontal stiffeners, lower frame cap, rear spar cap, and spar cap web. An analysis has determined that the operational and limit loads cannot duplicate this condition and the root cause is suspected to be the result of a high load event(s). This condition, if not corrected, could result in reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016. The service information describes procedures for a detailed inspection on the left and right sides of the forward and aft surfaces of cant station 1463 bulkhead and cant station 1254 bulkhead for cracking in the upper caps, upper cap doublers, bulkhead webs and doublers, stiffeners, lower caps, and vertical stabilizer rear spar caps and webs, between longerons L–11L through L–11R, and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0503.

The phrase ''corrective actions'' is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016, specifies to contact the manufacturer for certain instructions, but this proposed AD would require using repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016, specifies doing the inspection at cant station 1463 bulkhead for Model MD–88 airplanes. However, Model MD–88 airplanes are similar in design to Model DC–9–87 (MD–87) airplanes, and should instead be inspected at cant station 1254 bulkhead. Therefore, this proposed AD specifies that the proposed actions for Model MD–88 airplanes be accomplished using the Accomplishment Instructions for Model DC–9–87 (MD–87) airplanes in Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016. This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD affects 361 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	3 work-hours × $85 per hour = $255	$0	$255	$92,055

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on

the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0503; Directorate Identifier 2017–NM–032–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53; Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking of various structures at the cant station 1463 bulkhead and at the cant station 1254 bulkhead. We are issuing this AD to detect and correct cracking at the cant station 1463 bulkhead and cant station 1254 bulkhead, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Action

Within 700 flight cycles or 6 months after the effective date of this AD, whichever occurs first, do a detailed inspection for cracking on the left and right sides of the forward and aft surfaces of the cant station 1463 bulkhead (for Model DC–9–81 (MD–81), DC–9–82 (MD–82), and DC–9–83 (MD–83) airplanes) and cant station 1254 bulkhead (for DC–9–87 (MD–87) airplanes and MD–88 airplanes); and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016, except as required in paragraphs (h)(1) and (h)(2) of this AD. Do all applicable corrective actions before further flight.

(h) Exceptions to Service Information

(1) For Model MD–88 airplanes: This AD requires that instead of inspecting at cant station 1463 bulkhead, operators must inspect at cant station 1254 bulkhead, which is identified as ''DC–9–87 (MD–87) CANT STA 1254 BULKHEAD'' in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016.

(2) Where Boeing Alert Service Bulletin MD80–53A316, dated December 15, 2016, specifies to contact Boeing for appropriate action and specifies that action as ''RC'' (Required for Compliance): Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Multi Operator Message MOM–MOM–16–0684–01B, dated October 7, 2016.

(j) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is required before issuance of the special flight permit.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.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.

Issued in Renton, Washington, on May 18, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11006 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0519; Directorate Identifier 2017–NM–001–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. This proposed AD was prompted by a report of fatigue cracking found in a certain fuselage frame web. This proposed AD would require inspecting the fuselage frame for existing repairs, repetitive inspections of the frame, and applicable repairs. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0519.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0519; 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Muoi Vuong, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@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–2017–0519; Directorate Identifier 2017–NM–001–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 because of those comments.

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

Discussion

We have received a report indicating a 6-inch-long crack in the fuselage frame web at station (STA) 1681, below the floor line at stringer S–17L, was found during a routine maintenance visit. The crack was not easily detected because it was hidden by adjacent structure. Analysis revealed that the crack was caused by fatigue. Cracking of the fuselage frame, if not detected and corrected, could result in reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016. The service information describes procedures for inspecting the fuselage frame for existing frame and floor beam repairs, and repetitive high frequency eddy current inspections for cracking in any area with no existing frame repair, repetitive high and low frequency eddy current inspections for cracking in any area with no existing frame or floor beam repair, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, described previously, except for differences between this proposed AD and the service information that are identified in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0519.

Costs of Compliance

We estimate that this proposed AD affects 606 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for existing frame and floor beam repairs.	1 work-hour × $85 per hour = $85	$0	$85	$51,510.
Repetitive inspections	Up to 32 work-hours × $85 per hour = up to $2,720 per inspection cycle.	$0	Up to $2,720	Up to $1,648,320.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0519; Directorate Identifier 2017–NM–001–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 53; Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of fatigue cracking found in the fuselage frame web at station (STA) 1681. We are issuing this AD to detect and correct cracking of the fuselage frame at STA 1681, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Actions Required for Compliance

Except as required by paragraph (h) of this AD: Do all applicable actions identified as required for compliance (''RC'') in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016. Do the actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016.

(h) Exceptions

(1) Where Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, uses the phrase ''after the original issue of this service bulletin'' for determining compliance, for purposes of this AD, compliance is based on the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 757–53A0100, dated November 14, 2016, specifies contacting Boeing for instructions, and specifies that action as ''RC'' (Required for Compliance): This AD requires using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures

identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Muoi Vuong, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.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.

Issued in Renton, Washington, on May 19, 2017.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11004 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0514; Directorate Identifier 2016–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a revision of certain airworthiness limitation item (ALI) documents, which require more restrictive maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this 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–2017–0514; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; 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–2017–0514; Directorate Identifier 2016–NM–206–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0218, dated November 2, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

> The airworthiness limitations for Airbus A300–600 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A300–600 Airworthiness Limitations Section (ALS) document(s). These instructions have been identified as mandatory actions for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> EASA previously issued [EASA] AD 2014–0124 (later revised)[which includes actions for Airbus A300–600 airplanes; those actions are included in FAA AD 2013–13–13, Amendment 39–17501 (79 FR 48957, August 19, 2014) (''AD 2013–13–13'')], requiring the actions described in Airbus A300–600 Airworthiness Limitation Item (ALI) Document at issue 13 and Temporary Revision (TR) 13.1.
>
> Since EASA AD 2014–0124R1 was issued, Airbus replaced A300–600 ALI Document issue 13, with A300–600 ALS Part 2 Revision 01 and then published the A300–600 ALS Part 2 Variation 1.1 and Variation 1.2, to introduce more restrictive maintenance requirements and/or airworthiness limitations.
>
> A300–600 ALS Part 2 Variation 1.1 also includes ALI 571067 and ALI 571068, superseding Service Bulletin A300–53–6154, which is referenced in EASA AD 2006–0257

[which corresponds to FAA AD 2007–22–05, Amendment 39–15241 (72 FR 60236, October 24, 2007) (''AD 2007–22–05'')].

For the reasons described above, this [EASA] AD retains part of the requirements of EASA AD 2014–0124R1, which will be superseded, and requires accomplishment of the actions specified in Airbus A300–600 ALS Part 2 Revision 01, and ALS Part 2 Variation 1.1 and ALS Part 2 Variation 1.2 (hereafter collectively referred to as 'the ALS' in this [EASA] AD), and supersedes EASA AD 2006–0257. The remaining requirements of EASA AD 2014–0124R1 are retained in AD 2016–0217, applicable to A310 aeroplanes, published at the same time as this [EASA] AD.

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–2017–0514.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 01, dated August 7, 2015.
- Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Variation 1.1, dated January 25, 2016.
- Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Variation 1.2, dated July 22, 2016.

The service information describes airworthiness limitations applicable to the DT ALIs. These documents are distinct because they contain unique tasks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This NPRM would not supersede AD 2007–22–05 and AD 2013–13–13. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all the requirements of AD 2007–22–05 and AD 2013–13–13.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions 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 (j)(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 proposed AD affects 128 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
Maintenance program revision	1 work-hour × $85 per hour = $85	None	$85	$10,880

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2017–0514; Directorate Identifier 2016–NM–206–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

This AD affects AD 2007–22–05, Amendment 39–15241 (72 FR 60236, October 24, 2007) (''AD 2007–22–05'') and AD 2013–13–13, Amendment 39–17501 (79 FR 48957, August 19, 2014) (''AD 2013–13–13'').

(c) Applicability

This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a revision of certain airworthiness limitation item (ALI) documents, which require more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 3 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. The initial compliance times for doing the tasks are at the time specified in the service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, or within 3 months after the effective date of this AD, whichever occurs later.

(1) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 01, dated August 7, 2015.

(2) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Variation 1.1, dated January 25, 2016.

(3) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Variation 1.2, dated July 22, 2016.

(h) No Alternative Actions or Intervals

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

(i) Terminating Actions

Accomplishing the actions required by this AD terminates all of the requirements of AD 2007–22–05 and AD 2013–13–13 for that airplane only.

(j) 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 manager of the International Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0218, dated November 2, 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–2017–0514.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport 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 May 18, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11003 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0518; Directorate Identifier 2016–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–400 series airplanes. This AD was prompted by the failure of the fire control amplifier, which was likely caused by an electrical short in a discharged squib for a fire extinguishing bottle. This proposed AD would require replacing certain circuit breakers. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* 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–2017–0518; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0518; Directorate Identifier 2016–NM–167–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2016–25, dated September 5, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> An operator reported having a false SMOKE warning light for the Aft Baggage compartment, which caused the pilots to discharge the Aft Baggage compartment fire extinguishing bottles per Aircraft Flight Manual procedures. Subsequently, there were continuous engine and Auxiliary Power Unit (APU) fire warning lights, and the fire extinguishing bottles for both engines (forward and aft) and the APU were automatically discharged. Post event investigation of the Fire Control Amplifier (FCA) revealed a burnt 2600–P2 connector. The FCA was also found to have sustained significant thermal damage. In a separate event involving a different operator, several fire extinguishing bottles discharged after an electrical short was introduced into the FCA by a shorted squib tester (external ground support equipment) during maintenance.
>
> The FCA manufacturer has identified the most likely failure condition to be an electrical short at the discharged squib. The squib's burst disk may have caused a short circuit of the bridgewires, which caused the FCA's internal power wires to experience thermal damage, consequently powering other squibs and fire alarm lines and resulting in the uncommanded discharge of the fire extinguishing bottles and false fire indications.
>
> Bombardier (BA) has issued service bulletin (SB) 84–26–16 to change two 7.5 amp circuit breakers to lower current rating 1 amp circuit breakers to prevent damage to squib discharge circuits and the inadvertent discharge of fire extinguishing bottles.
>
> This [Canadian] AD mandates the incorporation of [Bombardier Service Bulletin] SB 84–26–16 to prevent the inadvertent discharge of fire extinguishing bottles; [leaving the flight crew with less firefighting capability in the event of a real fire].

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–2017–0518.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 84–26–16, Revision A, dated February 12, 2016. This service information describes procedures for locating and replacing certain 7.5-amp circuit breakers with 1-amp circuit breakers. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 53 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
Replacement of Circuit Breakers	3 work-hours × $85 per hour = $255	$0	$255	$13,515

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2017–0518; Directorate Identifier 2016–NM–167–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, and 4003 through 4504 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by the failure of the fire control amplifier (FCA), which was likely caused by an electrical short in a discharged squib for a fire extinguishing bottle. We are issuing this AD to prevent failure of the FCA and subsequent discharge of fire extinguishing bottles and false fire indications, leaving the flightcrew with less firefighting capability in the event of a real fire.

(f) Compliance

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

(g) Replacement of Affected Circuit Breakers

Within 6,000 flight hours or 3 years, whichever occurs first, after the effective date of this AD: Replace the 7.5-amp circuit breakers specified in Bombardier Service Bulletin 84–26–16, Revision A, dated February 12, 2016, with 1-amp circuit breakers, part number MS3320–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–26–16, Revision A, dated February 12, 2016.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–26–16, dated August 14, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2016–25, dated September 5, 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–2017–0518.

(2) For more information about this AD, contact Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* 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 May 19, 2017.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–10981 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0521; Directorate Identifier 2016–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This proposed AD was prompted by reports of fuel leaks in the engine and auxiliary power unit (APU) electrical fuel pump (EFP) cartridge/canister electrical connectors and conduits. This proposed AD would require repetitive inspections for fuel leakage at the engine and APU fuel pumps, and related investigative and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 17, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 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–2017–0521; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0521; Directorate Identifier 2016–NM–189–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2016–32R1, dated October 12, 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–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 variants) airplanes. The MCAI states:

> Fuel leaks have been reported in the engine and auxiliary power unit (APU) electrical fuel pump (EFP) cartridge/canister electrical connectors and conduits on production aeroplanes. Initially, Bombardier had determined that the subject discrepancy was limited to the new pump canister installations on 24 production aeroplanes. Bombardier also reported the possibility of cut insulation on the electric harness wires of the newly installed canister housing assemblies.
>
> Emergency [Canadian] AD CF–2014–17 [which corresponds to FAA AD 2014–15–17, Amendment 39–17919 (79 FR 44268, July 31, 2014)] was issued to limit landing light operation on-ground in order to address a potential fire hazard as result of possible fuel leak from APU, EFP electrical conduit in the landing light compartment. In addition, [Canadian] AD CF–2014–21 [which corresponds to FAA AD 2014–20–01, Amendment 39–17974 (79 FR 59640, October 3, 2014), superseded by FAA AD 2016–10–10, Amendment 39–18521 (81 FR 31497, May 19, 2016)(''AD 2016–10–10'')] was issued to mandate removal of then identified 24 discrepant EFP canister assemblies from service.
>
> Bombardier has recently determined that the subject fuel leaks may not be limited to the 24 units affected by [Canadian] AD CF–2014–21 [(AD 2016–10–10)], but may potentially affect other in-service [Bombardier Model] CL–600–2B16 aeroplanes. Until such time that a final fix for the fuel leak problem is realized, Bombardier as an interim mitigating action, has issued [Service Bulletins] SB 604–28–022 and SB 605–28–010 that introduces [a] repeat [general visual] inspection and if required, rectification [related investigative and corrective actions] of subject fuel leaks on affected aeroplanes. [Canadian] AD CF–2016–32 was issued on 29 September 2016 to mandate compliance with applicable Bombardier SBs, to mitigate any potential safety hazard resulting from fuel leaks.
>
> Revision 1 of this [Canadian] AD is being issued to correct a typographic error in paragraph B.1. of the [Canadian AD] Corrective Actions.

Related investigative actions involve, for certain airplanes, further inspections for fuel leakage. Corrective actions involve repair, and for certain other airplanes, those actions could include replacing O-rings, and replacing the fuel cartridge. 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–2017–0521.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued the following service bulletins:

• Bombardier Service Bulletin 604–28–022, dated October 19, 2015; and

• Bombardier Service Bulletin 605–28–010, dated October 19, 2015.

The service information describes procedures for repetitive general visual inspections, and related investigative and corrective actions if necessary. These documents are distinct since they apply to airplanes in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 121 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
General Visual Inspection	1 work-hour × $85 per hour = $85	$0	$85	$10,285

For Model CL–600–2B16 airplanes, having serial numbers 5701 through 5955 inclusive, 5957, 5960 through 5966 inclusive, 5968 through 5971 inclusive, and 5981, we estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace O-Ring in Affected Pump	3 work-hours × $85 per hour = $255	$17	$272
Replace Cartridge in Affected Pump	2 work-hours × $85 per hour = $170	8,618	8,788

For Model CL–600–2B16 airplanes having serial numbers 5301 through 5665 inclusive, we have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2017–0521; Directorate Identifier 2016–NM–189–AD.

(a) Comments Due Date

We must receive comments by July 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 variants) airplanes, certificated in any category, having serial numbers 5301 through 5665 inclusive, 5701 through 5955 inclusive, 5957, 5960 Through 5966 inclusive, 5968 through 5971 inclusive, and 5981.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This proposed AD was prompted by reports of fuel leaks in the engine and auxiliary power unit (APU) electrical fuel pump (EFP) cartridge/canister electrical connectors and conduits. We are issuing this AD to detect and correct fuel leaks in certain fuel pumps to remove a potential fuel ignition hazard.

(f) Compliance

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

(g) General Visual Inspection and Corrective Action—Model CL–600–2B16 Airplanes, Serial Numbers 5301 Through 5665 Inclusive

For Model CL–600–2B16 airplanes, having serial numbers 5301 through 5665 inclusive:

Within 600 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do general visual inspections of the locations specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–28–022, dated October 19, 2015; except where the Bombardier Service Bulletin 604–28–022, dated October 19, 2015 specifies to contact the manufacturer, before further flight accomplish corrective action in accordance with the procedures specified in paragraph (i)(2) of this AD. Do all applicable corrective

actions before further flight. Repeat the general visual inspections at intervals not exceeding 600 flight hours or 12 months, whichever occurs first.

(1) Do a general visual inspection for traces of fuel coming from the right-hand side engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(2) Do a general visual inspection for traces of fuel coming from the left-hand side engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(3) Do a general visual inspection for traces of fuel coming from the EFP electrical wiring conduit outlet at the lower body fairing area for engine EFPs and at the right-hand landing light compartment for the APU EFP.

(h) General Visual Inspection and Corrective Action—Model CL–600–2B16 Airplanes, Having Serial Numbers 5701 Through 5955 Inclusive, 5957, 5960 Through 5966 Inclusive, 5968 Through 5971 Inclusive, and 5981

For Model CL–600–2B16 airplanes, having serial numbers 5701 through 5955 inclusive, 5957, 5960 through 5966 inclusive, 5968 through 5971 inclusive, and 5981: Within 600 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do general visual inspections of the locations specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions in Bombardier Service Bulletin 605–28–010, dated October 19, 2015; except where Bombardier Service Bulletin 605–28–010, dated October 19, 2015 specifies to contact the manufacturer, before further flight accomplish corrective actions in accordance with the procedures specified in paragraph (i)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the general visual inspections at intervals not exceeding 600 flight hours or 12 months, whichever occurs first.

(1) Do a general visual inspection for traces of fuel coming from the right-hand side engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(2) Do a general visual inspection for traces of fuel coming from the left-hand side engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(3) Do a general visual inspection of the right-hand side landing light compartment for traces of fuel coming from the APU EFP.

(i) 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 manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2016–32R1, dated October 12, 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–2017–0521.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email: *Steven.Dzierzynski@faa.gov.*

(3) 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 1–866–538–1247 or direct-dial telephone 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 May 19, 2017.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11002 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0438; Airspace Docket No. 17–AEA–6]

Proposed Amendment VOR Federal Airways V–66, V–189, V–260, and V–266; in the Vicinity of Franklin, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify VHF Omnidirectional Range (VOR) Federal airways V–66, V–189, V–260, and V–266 in the Vicinity of Franklin, VA. The modifications are required due to the planned decommissioning of the Franklin, VA, VORTAC navigation aid which provides navigation guidance for portions of the above routes.

DATES: Comments must be received on or before July 17, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0438 and Airspace Docket No. 17–AEA–6 at the beginning of your comments. You may also submit 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 7400.11A 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: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

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 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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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–2017–0438 and Airspace Docket No. 17–AEA–6) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters 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 FAA Docket No. FAA–2017–0438 and Airspace Docket No. 17–AEA–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of 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 through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/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 **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 during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

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 proposed rule. 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 proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the descriptions of VOR Federal airways V–66, V–189, V–260, and V–266 due to the planned decommissioning of the Franklin, VA, VORTAC. The proposed route changes are described below.

V–66: V–66 currently extends between the Mission Bay, CA, VORTAC and the Franklin, VA, VORTAC. The amended route would be terminated on the east end at the Raleigh-Durham, NC, VORTAC instead of Franklin, VA.

V–189: V–189 currently extends between the Wright Brothers, NC, VOR/DME and the Hopewell, VA, VORTAC. The amended route would be terminated at the Tar River, NC, VORTAC eliminating the segments to Franklin, VA and Hopewell, VA.

V–260: V–260 currently extends between the Charleston, WV, VORTAC and the Cofield, NC, VORTAC. The amended route would be terminated at the Hopewell, VA, VORTAC, eliminating the segments to Franklin, VA and Cofield, NC.

V–266: V–266 currently extends between the Electric City, SC, VORTAC and the Wright Brothers, NC, VOR/DME. The proposed amendment would remove the route segment between the South Boston, VA, VORTAC and the Elizabeth City, NC, VORTAC. The amended route would, therefore, extend between the Electric City, SC, VORTAC and the South Boston, VA, VORTAC; and between the Elizabeth City, NC, VORTAC and the Wright Brothers, NC, VOR/DME. Consequently, there would be a gap in the route between the South Boston, VA, VORTAC and the Elizabeth City, NC, VORTAC.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be subsequently published 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 Department of Transportation (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 will 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.

List 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 and effective September 15, 2016, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–66 [Amended]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Crimson, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; to Raleigh-Durham, NC.

V–189 [Amended]

From Wright Brothers, NC; to Tar River, NC. The airspace within R–5302 and R–5314 is excluded when activated.

V–260 [Amended]

From Charleston, WV, Rainelle, WV; Roanoke, VA, Lynchburg, VA; Flat Rock, VA; Richmond, VA; to Hopewell, VA.

V–266 [Amended]

From Electric City, SC, to Spartanburg, SC. From Greensboro, NC; to South Boston, VA. From Elizabeth City, NC; to Wright Brothers, NC.

* * * * *

Issued in Washington, DC, on May 23, 2017.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2017–11080 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9473; Airspace Docket No. 16–ANM–7]

Proposed Amendment of Class D and Class E Airspace; Cheyenne, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace, Class E surface area airspace, Class E airspace extending upward from 700 feet above the surface, and Class E airspace extending upward from 1,200 feet above the surface at Cheyenne Regional/Jerry Olson Field Airport (formerly, Cheyenne Airport), Cheyenne, WY. Airspace redesign is necessary due to the decommissioning of the Cheyenne instrument landing system (ILS) locator outer marker and removal of the Cheyenne VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) from the airspace description as the FAA transitions from ground-based navigation aids to satellite-based navigation. Also, this action would update the airport name and geographic coordinates for Class D and E airspace areas to reflect the FAA's current aeronautical database.

DATES: Comments must be received on or before July 17, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–9473; Airspace Docket No. 16–ANM–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11, 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 7400.11A 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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

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 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 regulation is within the scope of that authority as it would amend Class D and Class E airspace at Cheyenne Regional/Jerry Olson Field Airport, Cheyenne, WY to support instrument flight rules operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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 and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9473/Airspace Docket No. 16–ANM–7.'' 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 through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/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 the 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 during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed 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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, Class E surface area airspace, Class E airspace extending upward from 700 feet above the surface, and Class E airspace extending upward from 1,200 feet above the surface at Cheyenne Regional/Jerry Olson Field Airport, Cheyenne, WY. This action would also update the airport name to Cheyenne Regional/Jerry Olson Field Airport (from Cheyenne Airport).

Class D airspace would be amended by removing the segment on each side of the Cheyenne ILS localizer east course extending from the 5.6-mile radius to the outer marker.

Class E surface area airspace would be modified coincident with the Class D airspace, and effective during the times the Class D is not in effect.

Class E airspace extending upward from 700 feet above the surface would be modified to within an 8.1-mile radius (from 12.2 miles) of Cheyenne Regional/Jerry Olson Field Airport, and within a 9.1-mile radius of the airport from a 240° bearing from the airport clockwise to the 300° bearing from the airport with a segment on each side of a 275° bearing from the airport extending from the airport 9.1-mile radius to 10.6 miles west of the airport, and with another segment on each side of a 028° bearing from the airport extending from the airport 8.1 mile radius to 10.8 miles northeast of the airport. The airspace extending upward from 1,200 feet above the surface would be modified to within a 43.6 mile radius of the airport (from a polygon of similar area) to provide controlled airspace for diverse departures until reaching the overlying Class E airspace.

This proposed airspace redesign is necessary due to the decommissioning of the Cheyenne ILS outer marker, removal of the Cheyenne VORTAC from the airspace description, and the availability of diverse departure headings as the FAA transitions from ground-based navigation aids to satellite-based navigation. Also, this action would update the airport's geographic coordinates for Class D and E airspace areas to reflect the FAA's current aeronautical database. Finally, this action would make an editorial change in the legal description by replacing Airport/Facility Directory with the term Chart Supplement.

Class D and Class E airspace designations are published in paragraph 5000, 6002, and 6005, 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 Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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 will 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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, and effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM WY D Cheyenne, WY [Amended]

Cheyenne Regional/Jerry Olson Field Airport, WY
(Lat. 41°09′20″ N., long. 104°48′38″ W.)

That airspace extending upward from the surface to and including 8,700 feet MSL within a 5.6-mile radius of Cheyenne Regional/Jerry Olson Field 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 Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WY E2 Cheyenne, WY [Amended]

Cheyenne Regional/Jerry Olson Field Airport, WY
(Lat. 41°09′20″ N., long. 104°48′38″ W.)

That airspace extending upward from the surface within a 5.6-mile radius of Cheyenne Regional/Jerry Olson Field 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 Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WY E5 Cheyenne, WY [Amended]

Cheyenne Regional/Jerry Olson Field Airport, WY
(Lat. 41°09′20″ N., long. 104°48′38″ W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Cheyenne Regional/Jerry Olson Field Airport from the 300° bearing from the airport clockwise to the 240° bearing, and within a 9.1-mile radius of the airport from the 240° bearing from the airport clockwise to the 300° bearing from the airport, and within 2.2 miles each side of the 275° bearing from the airport extending from the airport 9.1-mile radius to 10.6 miles west of the airport, and within 2.4 miles each side of a 028° bearing from the airport extending from the airport 8.1 mile radius to 10.8 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 43.6-mile radius of the airport.

Issued in Seattle, Washington, on May 22, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–11079 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0315; Airspace Docket No. 17–ANM–5]

Proposed Establishment of Class E Airspace, Dixon, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Dixon Airport, Dixon, WY, to support the development of instrument flight rules (IFR) operations under standard instrument approach and departure procedures at the airport, for the safety and management of aircraft within the National Airspace System.

DATES: Comments must be received on or before July 17, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0315; Airspace Docket No. 17–ANM–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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 7400.11A 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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

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 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 regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Dixon Airport, Dixon, WY to support IFR operations in standard instrument approach and departure procedures at the airport for the safety and management of aircraft within the National Airspace System.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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–2017–0315; Airspace Docket No. 17–ANM–5) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number).

Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2017–0315 and Airspace Docket No. 17–ANM–5''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date 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 through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/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 the 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 during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed 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 proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Dixon Airport, Dixon, WY. Class E airspace would be established within a 7-mile radius of Dixon Airport with a segment 8 miles wide (4 miles each side of a 045° bearing from the airport) extending to 15.5 miles northeast of the airport. This airspace is necessary to support IFR operations in standard instrument approach and departure procedures at the airport.

Class E airspace designations are published in paragraph 6005 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 E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, and is non-controversial and unlikely to result in adverse or negative comments. 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 rule, when promulgated, would 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WY E5 Dixon, WY [New]

Dixon Airport
(Lat. 41°02′15″ N., long. 107°29′33″ W.)

That airspace extending upward from 700 feet above the surface within a 7-miles radius of the Dixon Airport, and within 4 miles each side of a 045° bearing from the airport extending from the 7-mile radius to 15.5 miles northeast of the airport.

Issued in Seattle, Washington, on May 22, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–11078 Filed 6–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–460]

Schedules of Controlled Substances: Temporary Placement of Acryl Fentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to issue a temporary order to schedule the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide (acryl fentanyl *or* acryloylfentanyl), into Schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of this synthetic opioid into Schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. When it is issued, the temporary scheduling order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to Schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, reverse distribution, possession, importation, exportation, research, and conduct of instructional activities, and chemical analysis of this synthetic opioid.

DATES: The date of this notice of intent is June 2, 2017.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: This notice of intent is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary order to add acryl fentanyl to Schedule I under the Controlled Substances Act.[1] The temporary scheduling order will be published in the **Federal Register**, but that order will not be issued before July 3, 2017.

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into Schedule I of the CSA.[2] The Administrator transmitted notice of his intent to place acryl fentanyl in Schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter dated April 17, 2017. The Assistant Secretary responded to this notice by letter dated May 2, 2017, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for acryl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of acryl fentanyl into Schedule I of the CSA. Acryl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for acryl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of acryl fentanyl in Schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety.

To find that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in Schedule I. 21 U.S.C. 811(h)(1). Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Acryl Fentanyl

Acryl fentanyl was first described in 1981 in the scientific literature where its chemical structure and its *in vivo* antinociceptive effects were reported. No approved medical use has been identified for acryl fentanyl, nor has it been approved by the FDA for human consumption. The recent identification of acryl fentanyl in drug evidence and the identification of this substance in association with fatal overdose events indicate that this substance is being abused for its opioid properties.

Available data and information for acryl fentanyl, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–460.

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. Acryl fentanyl has recently been encountered by law enforcement and public health officials and the adverse health effects and outcomes are demonstrated by fatal overdose cases. The documented negative effects of acryl fentanyl are consistent with those of other opioids.

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. Data from STRIDE and STARLiMS were queried on May 5, 2017. STARLiMS registered 36 reports containing acryl fentanyl, from Alabama, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Missouri, North Carolina, South Carolina, Tennessee, Texas, and West Virginia. According to STARLiMS, the first laboratory submission of acryl fentanyl occurred in July 2016 in Texas.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state and local forensic laboratories across the country. NFLIS registered 74 reports containing acryl fentanyl from state or local forensic laboratories in Arkansas, California, Connecticut, Iowa, Kentucky, Ohio, Pennsylvania, South Carolina, Texas, and Wisconsin (query date: May 5, 2017).[3] The first report of acryl fentanyl was reported in Wisconsin in May 2016. The DEA is not aware of any laboratory identifications of acryl fentanyl prior to 2016.

Evidence suggests that the pattern of abuse of fentanyl analogues, including acryl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of acryl fentanyl have been encountered in powder form, in solution, and packaged similar to that of heroin. Acryl fentanyl has been encountered as a single substance as well as in combination with other substances of abuse, including heroin, fentanyl, 4-fluoroisobutyryl fentanyl, and furanyl fentanyl. Acryl fentanyl has been connected to fatal overdoses, in which insufflation and intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

Reports collected by the DEA demonstrate acryl fentanyl is being abused for its opioid properties. This abuse of acryl fentanyl has resulted in morbidity and mortality (*see* DEA 3-Factor Analysis for full discussion). The DEA has received reports for at least 83 confirmed fatalities associated with acryl fentanyl. Information on these deaths, occurring as early as September 2016, was collected by the DEA from post-mortem toxicology and medical examiner reports. These deaths were reported from, and occurred in, Illinois (27), Maryland (22), New Jersey (1), Ohio (31), and Pennsylvania (2). NFLIS and STARLiMS have a total of 110 drug reports in which acryl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2016 and 2017 from law enforcement encounters in

[2] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[3] Data are still being collected for February 2017–April 2017 due to the normal lag period for labs reporting to NFLIS.

Alabama, Arkansas, California, Connecticut, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin. It is likely that the prevalence of acryl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this substance from fentanyl.

The population likely to abuse acryl fentanyl overlaps with the population abusing prescription opioid analgesics, heroin, fentanyl, and other fentanyl-related substances. This is evidenced by the routes of drug administration and drug use history documented in acryl fentanyl fatal overdose cases and encounters of the substance by law enforcement officials. Because abusers of acryl fentanyl are likely to obtain this substance through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use a drug for the first time) acryl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

Factor 6. What, if Any, Risk There Is to the Public Health

Acryl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ-opioid receptor agonists. The toxic effects of acryl fentanyl in humans are demonstrated by overdose fatalities involving this substance. Abusers of acryl fentanyl may not know the origin, identity, or purity of this substance, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on information reviewed by the DEA, the misuse and abuse of acryl fentanyl leads to the same qualitative public health risks as heroin, fentanyl, and other opioid analgesic substances. As with any non-medically approved opioid, the health and safety risks for users are high. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Acryl fentanyl has been associated with numerous fatalities. At least 83 confirmed overdose deaths involving acryl fentanyl abuse have been reported from Illinois, Maryland, New Jersey, Ohio, and Pennsylvania in 2016 and 2017. As the data demonstrates, the potential for fatal and non-fatal overdoses exists for acryl fentanyl and acryl fentanyl poses an imminent hazard to the public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of acryl fentanyl poses an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for acryl fentanyl in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in Schedule I. Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for acryl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated April 17, 2017, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in Schedule I.

Conclusion

This notice of intent initiates a temporary scheduling process and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h), of DEA's intent to issue a temporary scheduling order. In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule acryl fentanyl in Schedule I of the CSA, and finds that placement of this synthetic opioid substance into Schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

The temporary placement of acryl fentanyl into Schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before July 3, 2017. Because the Administrator hereby finds that it is necessary to temporarily place acryl fentanyl into Schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling this substance will be effective on the date that order is published in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this notice. Upon publication of the temporary order, acryl fentanyl will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a Schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in Schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action 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. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(17) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(17) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: acryl fentanyl, acryloylfentanyl)	(9811)

* * * * *

Dated: May 24, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–11215 Filed 6–1–17; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2015–0683; FRL–9962–67]

RIN 2070–AK00

Notification of Submission to the Secretaries of Agriculture and Health and Human Services; Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) and the Secretary of the United States Department of Health and Human Services (HHS) a draft regulatory document concerning Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0683, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 305–5454; email address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(A) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft proposed rule at least 60 days before signing it in proposed form for publication in the **Federal Register**. Similarly, FIFRA section 21(b) requires the EPA Administrator to provide the Secretary of HHS with a copy of any draft proposed rule pertaining to a public health pesticide at least 60 days before publishing it in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the EPA Administrator shall include the comments of the Secretary and the EPA Administrator's response to those comments with the proposed rule that publishes in the **Federal Register**. If either Secretary

does not comment in writing within 30 days after receiving the draft proposed rule, the EPA Administrator may sign the proposed rule for publication in the **Federal Register** any time after the 30-day period.

II. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretaries of USDA and HHS. As such, none of the regulatory assessment requirements apply to this document.

Dated: May 17, 2017.

Marietta Echeverria,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2017–11569 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R08–RCRA–2016–0505; FRL–9962–17-Region 8]

Determination To Approve Alternative Final Cover Request for Phase 2 of the City of Wolf Point, Montana, Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and operated by the City of Wolf Point, Montana, on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana. The EPA is seeking public comment on EPA's determination to approve the City of Wolf Point's alternative final cover proposal.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making the final determination to approve the alternative final cover for Phase 2 of the City of Wolf Point landfill, as a direct final rule without a prior proposed rule. If we receive no relevant adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received on or before July 3, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2016–0505, by one of the following methods:

- Online: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.*
- *Email: roach.michael@epa.gov.*
- *Mail:* Michael Roach, Environmental Protection Agency, Region 8, Mail Code: 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202.
- *Hand delivery:* Environmental Protection Agency Region 8, Mail Code: 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202. Such deliveries are only accepted during normal hours of operation, which are Monday through Friday from 8:00 a.m. until 4:30 p.m.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2016–0505. The EPA may publish any comment received to its public docket without change and may be available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or by email. The *http://regulations.gov* Web site is an ''anonymous'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA rather than going through *http://www.regulations.gov,* your email address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact your for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Roach, Resource Conservation and Recovery Program, Mail Code: 8P–R, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202; telephone number: (303) 312–6369; email address: *roach.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is promulgating a site-specific rule that approves an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and operated by the City of Wolf Point, Montana, on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana, as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect relevant adverse comments. We have explained the reasons for this approval in the preamble to the direct final rule.

Unless the EPA receives relevant adverse comments that oppose the site-specific rule during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get relevant adverse comments that oppose the site-specific rule, we will withdraw the direct final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time

Dated: April 17, 2017.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11228 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 8 and 20

[WC Docket No. 17–108; FCC 17–60]

Restoring Internet Freedom

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a *Notice of Proposed Rulemaking (NPRM)* proposes to end the Commission's public-utility regulation of the Internet and seeks comment on returning to the bipartisan,

light-touch regulatory framework that saw the free and open Internet flourish prior to the 2015 adoption of the Commission's *Title II Order.* Specifically, the *NPRM* proposes to return broadband Internet access service to its classification as an information service, return the classification of mobile broadband to its classification as a private mobile service, and eliminate the Internet standard. The *NPRM* also seeks comment whether the Commission should keep, modify, or eliminate the bright-line rules set forth in the *Title II Order.*

DATES: Comments are due on or before July 17, 2017, and reply comments are due on or before August 16, 2017. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before August 1, 2017.

ADDRESSES: You may submit comments, identified by WC Docket No. 17–108, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole Ongele, Federal Communications Commission, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, at (202) 418–1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 17–108, adopted May 18, 2017 and released May 23, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.docx.*

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due August 1, 2017. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998), *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.* Parties who seek to file a large number of comments or ''group'' comments may do so through the public API or the Commission's electronic inbox established for this proceeding, called Restoring Internet Freedom Comments at *https://www.fcc.gov/restoring-internet-freedom-comments.* To ensure that bulk comments are properly recorded in ECFS, commenters must use the .CSV template provided.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD

20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

I. Introduction

1. Americans cherish a free and open Internet. And for almost twenty years, the Internet flourished under a light-touch regulatory approach. It was a framework that our nation's elected leaders put in place on a bipartisan basis. President Clinton and a Republican Congress passed the Telecommunications Act of 1996, which established the policy of the United States ''to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.''

2. During this time, the Internet underwent rapid, and unprecedented, growth. Internet service providers (ISPs) invested over $1.5 trillion in the Internet ecosystem and American consumers enthusiastically responded. Businesses developed in ways that the policy makers could not have fathomed even a decade ago. Google, Facebook, Netflix, and countless other online businesses launched in this country and became worldwide success stories. The Internet became an ever-increasing part of the American economy, offering new and innovative changes in how we work, learn, receive medical care, and entertain ourselves.

3. But two years ago, the FCC changed course. It decided to apply utility-style regulation to the Internet. This decision represented a massive and unprecedented shift in favor of government control of the Internet.

4. The Commission's *Title II Order* has put at risk online investment and innovation, threatening the very open Internet it purported to preserve. Investment in broadband networks declined. Internet service providers have pulled back on plans to deploy new and upgraded infrastructure and services to consumers. This is particularly true of the smallest Internet service providers that serve consumers in rural, low-income, and other underserved communities. Many good-paying jobs were lost as the result of these pull backs. And the order has weakened Americans' online privacy by stripping the Federal Trade Commission—the nation's premier consumer protection agency—of its jurisdiction over ISPs' privacy and data security practices.

5. Today, we take a much-needed first step toward returning to the successful bipartisan framework that created the free and open Internet and, for almost twenty years, saw it flourish. By proposing to end the utility-style regulatory approach that gives government control of the Internet, we aim to restore the market-based policies necessary to preserve the future of Internet Freedom, and to reverse the decline in infrastructure investment, innovation, and options for consumers put into motion by the FCC in 2015. Our actions today continue our critical work to promote broadband deployment to rural consumers and infrastructure investment throughout our nation, to brighten the future of innovation both within networks and at their edge, and to close the digital divide.

II. Ending Public-Utility Regulation of the Internet

6. Between enactment of the Telecommunications Act and the 2015 adoption of the *Title II Order,* the free and open Internet flourished: Providers invested over $1.5 trillion to construct networks; high-speed Internet access proliferated at affordable rates; and consumers were able to enjoy all that the Internet had to offer. In 2015, the Commission abruptly departed from its prior posture and classified broadband Internet access service as a telecommunications service subject to public-utility regulations under Title II.

7. Today, we propose to reinstate the information service classification of broadband Internet access service and return to the light-touch regulatory framework first established on a bipartisan basis during the Clinton Administration. We also propose to reinstate the determination that mobile broadband Internet access service is not a commercial mobile service.

A. Reinstating the Information Service Classification of Broadband Internet Access Service

8. Our proposal to classify broadband Internet access service as an information service is based on a number of factors. First, we examine the text, structure, and history of the Communications Act and the Telecommunications Act, combined with the technical details of how the Internet works. Second, we examine Commission precedent. Third, we examine public policy and our goal of benefiting consumers through greater innovation, investment, and competition. We seek comment on our proposals and these analyses.

1. The Text and Structure of the Act

9. We start with the text of the Act itself. Section 3 of the Act defines an ''information service'' as ''the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'' Section 3 defines a ''telecommunications service'' as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' Section 3 also defines ''telecommunications,'' used in each of the prior two definitions, as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.''

10. We believe that Internet service providers offer the ''capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.'' Whether posting on social media or drafting a blog, a broadband Internet user is able to generate and make available information online. Whether reading a newspaper's Web site or browsing the results from a search engine, a broadband Internet user is able to acquire and retrieve information online. Whether it's an address book or a grocery list, a broadband Internet user is able to store and utilize information online. Whether uploading filtered photographs or translating text into a foreign language, a broadband Internet user is able to transform and process information online. In short, broadband Internet access service appears to offer its users the ''capability'' to perform each and every one of the functions listed in the definition—and accordingly appears to be an information service by definition. We seek comment on this analysis. Can broadband Internet users indeed access these capabilities? Are there other capabilities that a broadband Internet user may receive with service? If broadband Internet access service does not afford one of the listed capabilities to users, what effect would that have on our statutory analysis? More fundamentally, we seek comment on

how the Commission should assess whether a broadband provider is ''offering'' a capability. Should we assess this from the perspective of the user, from the provider, or through some other lens?

11. In the *Cable Modem Order,* the Commission recognized that broadband Internet users often used services from third parties: ''[S]ubscribers, by 'click-through' access, may obtain many functions from companies with whom the cable operator has not even a contractual relationship. For example, a subscriber to Comcast's cable modem service may bypass that company's web browser, proprietary content, and email. The subscriber is free to download and use instead, for example, a web browser from Netscape, content from Fox News, and email in the form of Microsoft's 'Hotmail.''' It nonetheless found the classification appropriate ''regardless of whether subscribers use all of the functions provided as part of the service, such as email or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service.'' In the *Title II Order,* the Commission in turn found that ''consumers are very likely to use their high-speed Internet connections to take advantage of competing services offered by third parties'' and asserted the service ''is useful to consumers today primarily as a conduit for reaching modular content, applications, and services that are provided by unaffiliated third parties.'' We seek comment on how consumers are using broadband Internet access service today. It appears that, as in 2002 and 2013, broadband Internet users ''obtain many functions from companies'' other than their Internet service provider. It also appears that many broadband Internet users rely on services, such as Domain Name Service (DNS) and email, from their ISP. Is that correct? If not, what services are broadband Internet users accessing from what providers? More generally, we seek comment on the relevance of this analysis. The definition of ''information service'' speaks to the ''capability'' to perform certain functions. Is a consumer capable of accessing these online services without Internet access service? Could a consumer access these online services using traditional telecommunications services like telephone service or point-to-point special access? (In the past, rate-of-return carriers have offered broadband Internet access transmission service as a common-carriage last-mile service that transmits data between and end user and an ISP. Absent an ISP at the other end, however, broadband Internet access transmission service only transmits data to a carrier's central office (or other aggregation point) as it does not itself offer the capabilities that come with Internet access.) Or are we correct that offering Internet access is precisely what makes the service capable of ''generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information'' to consumers?

12. In contrast, Internet service providers do not appear to offer ''telecommunications,'' *i.e.,* ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received,'' to their users. *For one,* broadband Internet users do not typically specify the ''points'' between and among which information is sent online. Instead, routing decisions are based on the architecture of the network, not on consumers' instructions, and consumers are often unaware of where online content is stored. Domain names must be translated into IP addresses (and there is no one-to-one correspondence between the two). Even IP addresses may not specify where information is transmitted to or from because caching servers store and serve popular information to reduce network loads. In short, broadband Internet users are paying for the access to information ''with no knowledge of the physical location of the server where that information resides.'' We believe that consumers want and pay for these functionalities that go beyond mere transmission—and that they have come to expect them as part and parcel of broadband Internet access service. We seek comment on our analysis. How are broadband Internet users' requests for information handled by Internet service providers today? What functionalities beyond mere transmission do Internet service providers incorporate into their broadband Internet access service? We particularly seek comment on the *Title II Order*'s assertion that the phrase ''points specified by the user'' is ambiguous—how should we interpret that phrase so that it carries with it independent meaning and is not mere surplusage? Is it enough, as the *Title II Order* asserted, for a broadband Internet user to specify the information he is trying to access but not the ''points'' between or among which the information will be transmitted? Does it matter that the Internet service provider specifies the points between and among which information will be transmitted? (We note that the *Title II Order* asserted that ''[i]t is not uncommon in the toll-free arena for a single number to route to multiple locations, and such a circumstance does not transform that service to something other than telecommunications.'' Despite that assertion, the Commission *has* expressly found that the management of toll-free numbers is ''not a common carrier service'' and that providers that manage toll-free numbers ''do not need to be carriers.'').

13. *For another,* Internet service providers routinely change the form or content of the information sent over their networks—for example, by using firewalls to block harmful content or using protocol processing to interweave IPv4 networks with IPv6 networks. The Commission has acknowledged that broadband Internet networks must be reasonably managed since at least the *2005 Internet Policy Statement.* We believe that consumers want and pay for these functionalities that go beyond mere transmission—and that they have come to expect them as part and parcel of broadband Internet access service. We seek comment on our analysis. What constitutes a ''change in the form'' of information? If not the protocol-processing for internetworking or other protocol-processing performed as part of Internet access service, how should we interpret this phase so it carries with it independent meaning and is not mere surplusage? How could we plausibly conclude that it is not a ''change in the . . . content'' to use firewalls and other reasonable network management tools to shield broadband Internet users from unwanted intrusions and thereby alter what information reaches the user for the user's benefit? We seek comment on other ways in which Internet service providers change the form or content of information to facilitate a broadband Internet user's experience online.

14. Other provisions of the Act appear to confirm our analysis that broadband Internet access services should be classified as information services. For instance, section 230 defines an interactive computer service to mean ''*any information service,* system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system *that provides access to the Internet* and such systems operated or services offered by libraries or educational institutions.'' On its face, the plain language of this provision deems Internet access service an information service. We seek comment on this analysis, on the language of section 230, and on how it

should impact our classification of broadband Internet access service.

15. Section 231 is even more direct. It expressly states that ''Internet access service'' ''does not include telecommunications services.'' And it defines Internet access service as one offering many capabilities (like an information service): ''a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers.'' Although inserted into the Communications Act one year after the Telecommunications Act's passage and previously interpreted to ''clarify that section 231 was not intended to impair our or a state commission's ability to regulate basic telecommunications services,'' this language on its face makes clear that Internet access service is not a telecommunications service. We seek comment on this analysis, on the language of section 231, and on how it should impact our classification of broadband Internet access service.

16. The structure of Title II appears to be a poor fit for broadband Internet access service. In the *Title II Order,* the Commission, on its own motion, forbore either in whole or in part on a permanent or temporary basis from 30 separate sections of Title II as well as from other provisions of the Act and Commission rules. The significant forbearance the Commission granted in the *Title II Order* suggests the highly prescriptive regulatory framework of Title II is unsuited for the dynamic broadband Internet access service marketplace. We seek comment on this analysis, and on what weight we should give this analysis in examining the future of this model of regulation.

17. The purposes of the Telecommunications Act appear to be better served by classifying broadband Internet access service as an information service. Congress passed the Telecommunications Act to ''promote competition and reduce regulation'' and ''[n]othing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services or to expand traditional telephone regulation to new and advanced services.'' Or as Senator John McCain put it, ''[i]t certainly was not Congress's intent in enacting the supposedly pro-competitive, deregulatory 1996 Act to extend the burdens of current Title II regulation to Internet services, which historically have been excluded from regulation.'' Or as Congress codified its intent in section 230: It is the policy of the United States ''to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.'' An information service classification would ''reduce regulation'' and preserve a free market ''unfettered by Federal or State regulation''—but a telecommunications service classification would not. Indeed, as Judge Brown of the D.C. Circuit recently noted, ''[b]y incorporating [the] FCC's distinction between 'enhanced service' and 'basic service' into the statutory scheme, and by placing Internet access on the 'enhanced service' side, Congress prohibited the FCC from construing the 'offering' of 'telecommunications service' to be the 'information service' of Internet access.'' We seek comment on this analysis, as well as whether there are any other provisions of the Communications Act or Telecommunications Act that establish congressional intent with respect to the appropriate regulatory framework for broadband Internet access services.

18. More broadly, we seek comment on the text, structure, and purposes of the Communications Act and the Telecommunications Act, as well as any additional facts about what Internet service providers offer, how broadband Internet access service works, and what broadband Internet users expect that might inform our analysis.

19. We seek special comment on two aspects of the *Title II Order*'s interpretation of the Act. First, the *Title II Order* claimed its interpretation sprang in part from a change in ''broadband providers' marketing and pricing strategies, which emphasize speed and reliability of transmission separately from and over the extra features of the service packages they offer.'' It claimed this marketing ''leaves a reasonable consumer with the impression that a certain level of transmission capability—measured in terms of 'speed' or 'reliability'—is being offered in exchange for the subscription fee, even if complementary services are also included as part of the offer.'' We note that even before the *Cable Modem Order,* the Commission recognized that Internet service providers marketed the speed of their connections. We seek comment on whether Internet service providers' marketing has decidedly changed in recent decades. More generally, we seek comment on the relevance of this argument. Neither statutory service definition speaks of speed or reliability, and there is little reason to think consumers might want a fast or reliable ''transmission . . . of information'' but not a fast or reliable ''capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information.'' Indeed, many of the advertisements discussed by the *Title II Order* speak directly to the capabilities offered through high-speed service. We seek comment on this analysis and on any other relevant facts regarding whether broadband Internet users receive the capabilities of an information service or the mere transmission between points of a user's choosing of a telecommunications service.

20. Second, the *Title II Order* found that DNS and caching used in broadband Internet access service were just used ''for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'' The Commission has previously held this category applies to ''adjunct-to-basic'' functions that are ''incidental'' to a telecommunications service's underlying use and ''do not alter [its] fundamental character.'' As such, these functions generally are not ''useful to end users, rather than carriers.'' We seek comment on how DNS and caching functions are now used, whether they benefit end users, Internet service providers, or both, and whether they fit within the adjunct-to-basic exception. How would broadband Internet access service work without DNS or caching? Would removing DNS have a merely incidental effect on broadband Internet users, or would it fundamentally change their online experience? Absent caching, would broadband Internet users that now expect high-quality video streaming see only incidental changes or more fundamental changes? Are there other ways that DNS or caching are used for ''for the management, control, or operation of a telecommunications system''? Are there any other aspects of the *Title II Order*'s treatment of DNS or caching that should be reconsidered here?

2. Commission Precedent Supports Classification as an Information Service

21. Our proposed classification of broadband Internet access service as an information service is firmly rooted in Commission precedent. For two decades, a consistent bipartisan framework supported a free and open Internet. That same consensus led to six separate Commission decisions confirming that Internet access service is an information service, subject to Title I. Chairman Kennard first led the

FCC in determining that Internet access service is an information service in the *Stevens Report.* Chairman Powell led the Commission to classify broadband Internet access service over cable systems as an information service in the *Cable Modem Order.* Chairman Martin led the Commission to classify several broadband Internet access services as information services in the *Wireline Broadband Classification Order,* the *BPL-Enabled Broadband Order,* and the *Wireless Broadband Internet Access Order.* Finally, Chairman Genachowski declined to reclassify broadband Internet access services in the *Open Internet Order.*

22. We believe the Commission under Democratic and Republican leadership alike was correct in these decisions to classify broadband Internet access service as an information service and that, 20 years after the passage of the Telecommunications Act, we should be reluctant to second-guess the interpretations of those more likely to understand the contemporary meaning of the terms of the Telecommunications Act. We seek comment on our assessment. Did the Commission's historical information service classification better enable flexibility in marketplace offerings? Did the regulatory certainty of maintaining the same regulatory environment for approximately three decades (since the *Computer Inquiries*) foster additional investment or innovative business models to benefit consumers? How should we evaluate the prior Commissions' predictions of intermodal competition given the 4,559 Internet service providers now in the market? How many providers would likely have entered the market if traditional Title II regulation had been the norm? What actual harms, if any, resulted from light-touch regulation?

23. The Commission has previously concluded that Congress formally codified information services and telecommunications services as two, mutually exclusive types of service in the Telecommunications Act. The *Title II Order* did not appear to disagree with this analysis, finding that broadband Internet access service was a telecommunications service and *not* an information service. We believe this conclusion regarding mutual exclusivity is correct based on the text and history of the Act. We seek comment on this analysis.

24. The Commission has previously found that Congress intended the definitions of information service and telecommunications service in the Act to parallel those definitions in the MFJ and in the *Computer Inquiries.* The *Title II Order* apparently accepted these parallels. We thus seek comment on any evidence that the court in the MFJ thought that Internet access service was a telecommunications service. Did the court and the Department of Justice intend to exclude Internet access services from the prohibitions on what Bell Operating Companies could offer? Did the court and the Department of Justice intend for Internet access services to be regulated via tariff (as other telecommunications services were)? We similarly seek comment on any evidence that the Commission in the *Computer Inquiries* thought that Internet access service was a basic service. Did the Commission intend for facilities-based carriers to offer Internet access service without the protections of the *Computer Inquiries* (as they could for basic services)? The Supreme Court has said that statutory interpretation ''must be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency.'' How is that canon relevant here?

25. Finally, the *Title II Order* deviated further from Commission precedent to extend its authority to Internet traffic exchange or ''interconnection,'' an area historically unregulated and beyond the Commission's reach. We believe Internet traffic exchange, premised on privately negotiated agreements or case-by-case basis, is not a telecommunications service. Moreover, we find nothing in the Act that would extend our jurisdiction as previously suggested by the *Title II Order.* We further do not believe there exists any non-Title II basis for the Commission to exercise ongoing regulatory oversight over Internet traffic exchange. We accordingly propose to relinquish any authority over Internet traffic exchange. We seek comment on the consequences and implications of relinquishing the Commission's regulatory authority in this manner.

26. We note that the Commission's *Title II Order* also went well beyond agency precedent in important ways. For instance, the Commission did not limit its analysis to the ''last mile'' connections at issue in the *Brand X* and the FCC's underlying proceeding in that case. Rather, the Commission's *Title II Order* defined Internet access service as extending far deeper into the network. We seek comment on the significance of this expansive departure from agency precedent.

3. Public Policy Supports Classification as an Information Service

27. The Commission's decision to reclassify broadband Internet access service as a telecommunications service subject to Title II regulation has resulted in negative consequences for American consumers—including depressed broadband investment and reduced innovation because of increased regulatory burdens and regulatory uncertainty stemming from the rules adopted under Title II. As providers have devoted more resources to complying with new regulations, the threat of regulatory enforcement of vague rules and standards has dampened providers' incentive to invest and innovate. Additionally, although reclassifying broadband Internet access service as a telecommunications service has led to significant regulatory burdens, it has not solved any discrete, identifiable problems. Restoring broadband Internet access service to its previous status as an information service subject to Title I is in the public interest because it will alleviate the harms caused by Title II reclassification. We seek detailed comment on this analysis below.

28. Following the *2014 Notice* and in the lead up to the *Title II Order,* Internet service providers stated that the increased regulatory burdens of Title II classification would lead to depressed investment. Recent data indicate how accurate those predictions were. A recent study indicates that capital expenditure from the nation's twelve largest Internet service providers has fallen by $3.6 billion, a 5.6% decline relative to 2014 levels. Another study indicated that between 2011 and 2015, the threat of reclassification reduced telecommunications investment by about 20–30%, or about $30–40 billion annually. Other sources also explain that other countries' experiences should caution the United States that ongoing utility-style regulation should be expected to have even more dramatic impacts on investment beyond what has already occurred. Other interested parties have come to different conclusions. (Free Press, Internet Service Providers' Capital Expenditures (Feb. 28, 2017), (noting a decrease in investment from 2015 to 2016, but claiming an increase in investment in the 2-year period of 2015–16 compared to 2013–14). We observe, however, that these figures showing increased investment do not incorporate the generally accepted accounting practice of maintaining consistency over time, as they include AT&T's foreign capital expenditures in Mexico as well as

expenditures related to DirectTV, and do not adjust for Sprint's changed accounting treatment of leased handset devices from an operating expense to a capital expense.).

29. We believe that these reduced expenditures are a direct and unavoidable result of Title II reclassification, and exercise our predictive judgment that reversing the Title II classification and restoring broadband Internet access service to a Title I service will increase investment. Among other things, Internet service providers have finite resources, and requiring providers to divert some of those resources to newly imposed regulatory requirements adopted under Title II will, unsurprisingly, reduce expenditures that benefit consumers. We seek comment on how the burdens associated with Title II regulation have impacted broadband investment and, as a result, consumers. Has the Commission's increased regulation of broadband adversely impacted broadband investment and innovation? What impact has Title II reclassification had on providers' business models, including any lost opportunity costs, and how has this impact been passed on to consumers? Is there any evidence that increased regulation has promoted broadband investment, as some claim? What are the long-term implications of utility-style regulation with respect to capital expenditures on high-speed networks?

30. We also seek specific comment on how the classification of broadband Internet access service as a telecommunications service has impacted smaller broadband Internet access service providers, many of whom lack the dedicated compliance staffs and financial resources of the nation's largest providers. Before the Commission adopted the *Title II Order,* many small providers made it clear that reclassification would harm their businesses and the customers they serve. Since reclassification, small providers—including non-profit, municipal ISPs—have been forced to reduce their investment and halt the expansion of their networks, and slow, if not delay, the development and deployment of innovative new offerings. For example, one small ISP had planned to ''triple the number of new base stations'' that would be deployed each month to provide fixed wireless broadband service to new customers, but put those plans on hold as a result of the Commission's reclassification. Other small providers have had to modify or abandon altogether past business models to account for increased compliance costs and depressed investment from outside investors. This depressed investment has had particularly strong impacts on the deployment of broadband to previously unserved and rural areas. What other impacts have small providers felt as a result of reclassification? Have there been any corresponding benefits for small providers?

31. In addition to imposing significant regulatory costs on Internet service providers, Title II reclassification created significant regulatory uncertainty. USTelecom specifically identified ''regulatory uncertainty'' as one of the causes of reduced investment. Regulatory uncertainty may have particularly significant effects on small Internet service providers, which may be poorly equipped to address the legal, technical, and financial burdens associated with an uncertain regulatory environment. That uncertainty has directly led to reduced investment, which has harmed consumers. We seek comment on what other effects regulatory uncertainty has had on broadband Internet access service providers' investment decisions.

32. We also seek comment on other consumer benefits that would result from restoring broadband Internet access service classification to an information service, rather than subjecting these services to utility-style regulation. We note that increased investment is likely to lead to a faster closing of the digital divide for rural and low-income consumers, higher speeds and more competition for all consumers, as well as more affordable prices. We seek comment on the magnitude of these effects, and what further steps the Commission should take to maximize facilities-based investment and competition. Specifically, we seek comment on the trade-offs from changing the classification status. We also seek comment more broadly on the effects on innovation of regulatory uncertainty, and other examples of reduced innovation from Internet service providers as a result of the Title II classification.

33. We also seek comment on specific ways in which consumers were harmed under the light-touch regulatory framework that existed before the Commission's *Title II Order.* Much of the *Title II Order* focused extensively on hypothetical actions Internet service providers ''might'' take, and how those actions ''might'' harm consumers, but the *Title II Order* only articulated four examples of actions Internet service providers arguably took to justify its adoption of the Internet conduct standard under Title II. Do these isolated examples justify the regulatory shift that Title II reclassification entailed? Do such isolated examples constitute market failure sufficient to warrant pre-emptive, industry-wide regulation? Were pre-existing federal and state competition and consumer protection regimes, in addition to private sector initiatives, insufficient to address such isolated examples, and if so, why? What are the costs and benefits of pre-emptive, industry-wide regulation in such circumstances? In particular, does that approach deter competition and competitive entry, and does it have unintended consequences with respect to infrastructure investment? Do those unintended consequences outweigh any purported benefits in addressing such isolated cases pre-emptively? Is there evidence of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification for broadband Internet access service? Is there any evidence that the likelihood of these events occurring decreased with the shift to Title II?

34. Conversely, what, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers? Was Title II reclassification necessary for any of those changes to occur? Is there any evidence, for example, that consumers' online experiences and Internet access have improved due to policies adopted in the *Title II Order*?

4. The Commission Has Legal Authority To Classify Broadband Internet Access Service as an Information Service

35. As the D.C. Circuit has held, ''[i]t is axiomatic that administrative agencies may issue regulations only pursuant to authority delegated to them by Congress.'' And that authority is not unbounded. The Commission has authority, as the Supreme Court recognized in *Brand X,* to interpret the Communications Act, including ambiguous definitional provisions. However, when interpreting a statute it administers, the Commission, like all agencies, ''must operate 'within the bounds of reasonable interpretation.' And reasonable statutory interpretation must account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.' ''

36. An agency also is free to change its approach to interpreting and implementing a statute so long as it acknowledges that it is doing so and justifies the new approach. Evaluating the change in regulatory approach in the *Title II Order,* the D.C. Circuit majority

in *USTelecom* applied a ''highly deferential standard'' to the agency's predictive judgments regarding the investment effects of reclassification, and deferred to the Commission's '''evaluat[ion of] complex market conditions''' underlying its rejection of providers' reliance interests in the prior classification. D.C. Circuit precedent also recognizes, however, that should the Commission's predictions ''prove erroneous, the Commission will need to reconsider'' the associated regulatory actions ''in accordance with its continuing obligation to practice reasoned decision-making.'' We believe that the Commission's predictions and expectations regarding broadband investment and the nature and effects of reclassification on the operation of the marketplace were mistaken and have not been borne out by subsequent events. Moreover, we believe that a restoration of the information service classification for broadband Internet access service is likely to increase infrastructure investment. In such a case, principles of administrative law give us more than ample latitude to revisit our approach. We seek comment on this overall approach, and we seek comment on these specific issues in the sections below.

37. Even more fundamentally, we believe that the Commission's statutory interpretation in the *Title II Order* did not adequately reflect proper standards of statutory construction, and that classifying broadband Internet access service as an information service is the better reading of the statute, independent of the factual developments subsequent to the *Title II Order.* We note that the Supreme Court has expressly upheld the Commission's prior information service classification. We seek comment on this analysis. Although the *Title II Order*'s telecommunications service classification was upheld in *USTelecom,* the court emphasized that it ''sit[s] to resolve only legal questions presented and argued by the parties,''' and not '''arguments a party could have made but did not.'' Many arguments as to why an information service classification of broadband Internet access service reflects the better reading of ambiguous provisions of the Act were not addressed by the court because the arguments were raised in support of a claim that the Act unambiguously required a particular service classification. (Or, in other cases they were not addressed at all. rejecting arguments that information service classification was unambiguously required based on the text, structure, and purpose of the Act; highlighting the limited ways in which USTelecom challenged the *Title II Order* for failing to demonstrate that the *NARUC* test for common carriage was met; rejecting arguments that the statute completely precludes the Commission from defining ''public switched network'' more broadly than the public switched telephone network; rejecting arguments that the statute necessarily compels the Commission to distinguish between ''mobile broadband alone enabling a connection'' and ''mobile broadband enabling a connection through use of adjunct applications such as VoIP''). Thus, although we are in any case free to revisit previously affirmed interpretations of ambiguous statutory language, we note that the *USTelecom* decision did not reach many aspects of the statutory analysis we propose here. We seek comment on this analysis and on our reasoning that the statutory interpretation proposed in this NPRM more faithfully adheres to the Act and reflects the better reading of the relevant provisions than the views adopted in the *Title II Order.*

B. Reinstating the Private Mobile Service Classification of Mobile Broadband Internet Access Service

38. We propose to classify all broadband Internet access services—both fixed and mobile—as information services. With respect to mobile broadband Internet access service, we further propose to return it to its original classification as a private mobile service, and in conjunction to revisit the elements of the *Title II Order* that modified or reinterpreted key terms in section 332 of the Act and our implementing rules. We seek comment on that proposal, including on the specific issues discussed below. We also generally seek comment on whether certain and, if so, which, aspects of the D.C. Circuit's analysis of mobile broadband Internet access service in *USTelecom* necessitate modifications or additions to the Commission's proposals with respect to mobile broadband Internet access service here. We also seek comment on the scope of the authority delegated by sections 332(d)(1) through (3) to the Commission to define or specify the terms used in section 332 and discussed below.

39. We propose to restore the meaning of ''public switched network'' under section 332(d)(2) to its pre-*Title II Order* focus on the traditional public switched telephone network. We find persuasive the Commission's reasoning when originally adopting the prior definition, which also appears more consistent with the historical usage of the term ''public switched network,'' appears to better accord with the text of section 332(d)(2) by clearly covering only a single, integrated network, and was not disturbed by Congress in amendments to section 332 of the Act. We seek comment on this analysis and our proposed approach.

40. We also propose to return to our prior definition of ''interconnected service'' by restoring the word ''all'' in the codified definition. Although the court in *USTelecom* found the deletion of ''all'' to be ''of no consequence'' to the reclassification of mobile broadband Internet access service, it did so based on an argument that the Commission never mentioned in its brief—namely, that mobile broadband users can reach telephone customers ''via VoIP'' and that this determination is sufficient (regardless of the deletion of the word ''all'') to render mobile broadband Internet access service interconnected with the public switched network. We seek comment on that view and whether the Commission erred in 2015 by modifying the definition based on the view that two separate networks can be interconnected if they do not allow all users to communicate with each other. (Had all the elements of the *Title II Order*'s mobile broadband Internet access service classification remained, a future Commission might have incentives to continue pursuing such an approach to avoid the potentially absurd result that traditional wireless voice service no longer constituted commercial mobile service. While not finding it a sufficient basis to reject the *Title II Order*'s treatment of mobile broadband Internet access service, the D.C. Circuit acknowledged the possibility that the revised definition of public switched network raised questions about whether traditional wireless voice service was sufficiently interconnected with the public switched network to still constitute a commercial mobile service.) The FCC's prior decision in this respect appears to run contrary to the focus on a single, integrated network that we believe Congress likely intended in section 332(d)(2). We seek comment on these views. In the *Title II Order,* the Commission noted that the prior definition of ''interconnected service'' would encompass a service that ''provides general access to points on the PSN [but] also restricts calling in certain limited ways'' (such as blocking of 900 numbers), but cited no evidence that the prior definition led to any confusion. We question the need for changes to the prior definition to account for that limited exception to

general access, but nonetheless seek comment on whether modified rule language is warranted, and if so, what language targeted narrowly to that issue should be incorporated.

41. We also seek comment on whether any other interpretations of section 332 or our implementing rules from the *Title II Order* should be revisited here in connection with our proposed classification of mobile broadband Internet access service. For example, would a narrower interpretation of ''capability'' for purposes of the definition of ''interconnected service'' under our rules be warranted based on the Act or the regulatory history of that language? Are there other interpretations that should be reconsidered? In addition to the changes to the definitions in section 20.3 of the rules discussed above, would any additional changes to our codified rules be warranted?

42. In applying the definitions and interpretations of key terms in section 332 and our implementing rules under the proposals above, we also propose to reach the same conclusions regarding the application of those terms to mobile broadband Internet access service as we did in the *Wireless Broadband Internet Access Order.* We seek comment on that proposal and whether there have been any material changes in technology, the marketplace, or other facts that would warrant refinement or revision of any of that analysis.

43. Furthermore, insofar as mobile broadband Internet access service is best interpreted to be an information service, we believe that likely also would counsel in favor of classifying it as a private mobile service to avoid the inconsistency of the service being both an information service and a common carrier service. The Commission explained this reasoning when originally classifying mobile broadband Internet access service as both an information service and a private mobile service, and we propose to apply that same reasoning again here. We seek comment on this proposal.

44. We also believe that mobile broadband Internet access service is not the ''functional equivalent'' of commercial mobile service, and seek comment on that view. The Commission previously has observed, in light of Congress's determinations in section 332, that ''very few mobile services that do not meet the definition of CMRS will be a close substitute for a commercial mobile radio service.'' By contrast, we are concerned that the *Title II Order*'s test, which focuses on whether the service merely ''enables ubiquitous access to the vast majority of the public,'' would eviscerate the statutory scheme. We believe that the standard for demonstrating functional equivalency under our rules is instead more likely to properly implement section 332(d)(3) of the Act, and we thus propose to reconsider the *Title II Order*'s position that the Commission is free to depart from that standard. In addition, the *Title II Order* made no claim that the functional equivalency standard in our rules was met by mobile broadband Internet access service, and we similarly propose here that it does not meet that standard. We seek comment on these proposals and on any other or different definition of ''functional equivalent'' that the FCC should adopt.

45. Given the apparent historical success of the wireless marketplace prior to the *Title II Order,* we anticipate that returning mobile broadband Internet access service to its original classification of a private mobile service and restoring prior definitions and interpretations of key concepts in section 332 is likely to substantially benefit the wireless marketplace and consumers and have few, if any, policy disadvantages. We seek comment on this view. To the extent any commenters believe that these proposals will have negative policy consequences, we seek specific information regarding the scope or significance of any such consequences and whether they can be mitigated in whole or in part through modifications to our proposals.

C. Effects on Regulatory Structures Created by the Title II Order

46. The *Title II Order* imposed additional regulatory frameworks under Title II, including forbearance and privacy. We seek comment on how we should treat those structures and proceedings moving forward.

47. *Forbearance.* If we adopt our lead proposal to remove the Title II reclassification of broadband Internet access service, what effect does that action have on the provisions of the Act from which the Commission forbore in the *Title II Order*? We believe that restoring the classification status of broadband Internet access service to an information service will render any additional forbearance moot in most cases. We seek comment on this analysis. At the same time, we seek comment on whether, with respect to broadband Internet access service, the Commission should maintain and extend forbearance to even more provisions of Title II as a way of further ensuring that our decision in this proceeding will prove to reduce regulatory burdens.

48. We also seek comment on the effect of reinstating an information service classification on providers that voluntarily offered broadband transmission on a common carrier basis under the *Wireline Broadband Classification Order* framework. The *Title II Order* allowed such providers to opt-in to the *Title II Order*'s forbearance framework. Should providers voluntarily electing to offer broadband transmission on a common carrier basis be able to do so under the *Title II Order*'s forbearance framework if we reclassify broadband Internet access service as an information service? If not, what transition mechanisms are required for such providers that opted-in to the *Title II Order*'s forbearance framework to enable them to revert back to the *Wireline Broadband Classification Order* framework? Should we extend forbearance to any other rules or statutory provisions for carriers that choose to offer broadband transmission on a common carrier basis?

49. *Section 222 Regulations.* Historically, the Federal Trade Commission (FTC) protected the privacy of broadband consumers, policing every online company's privacy practices consistently and initiating numerous enforcement actions. When the Commission reclassified broadband Internet access service as a common carriage telecommunications service in 2015, however, that action stripped FTC authority over Internet service providers because the FTC is prohibited from regulating common carriers. (One Ninth Circuit case held that the common carrier exemption precluded FTC oversight of ISPs that otherwise were common carriers with respect to non ISP services. As the FCC recently explained in that case, the panel decision erred by overlooking the textual relationship between the statutes governing the FTC's and FCC's jurisdiction. The FCC's letter called on the Ninth Circuit to grant rehearing, which it recently did, and in doing so it set aside the earlier and erroneous panel opinion. The recent en banc order by the Ninth Circuit means that the *Title II Order*'s reclassification of broadband Internet access service serves as the only limit on the authority of the FTC to oversee the conduct of Internet service providers). To address the gap created by the Commission's reclassification of broadband Internet access service as a common carriage service, the *Title II Order* called for a new rulemaking to apply section 222's customer proprietary network information provisions to Internet service providers. In October 2016, the Commission

adopted rules governing Internet service providers' privacy practices and applied the rules it adopted to other providers of telecommunications services. In March 2017, Congress voted under the Congressional Review Act (CRA) to disapprove the Commission's *2016 Privacy Order,* which prevents us from adopting rules in substantially the same form.

50. We propose to respect the jurisdictional lines drawn by Congress whereby the FTC oversees Internet service providers' privacy practices, given its decades of experience and expertise in this area. We seek comment on this proposal.

51. *Lifeline.* We propose to maintain support for broadband in the Lifeline program after reclassification. In the *Universal Service Transformation Order,* the Commission recognized that ''[s]ection 254 grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered'' and ''allows us to . . . require carriers receiving federal universal service support to invest in modern broadband-capable networks.'' Accordingly, as the Commission did in the *Universal Service Transformation Order,* we propose requiring Lifeline carriers to use Lifeline support ''for the provision, maintenance, and upgrading'' of broadband services and facilities capable of providing supported services. We seek comment on this proposal. We also seek comment on any rule changes necessary to effectuate this change in our underlying authority to support broadband for low-income individuals and families.

52. *Other.* Beyond the issues raised above, we seek comment on the impact of reclassification on other Commission proceedings and proposals. For instance, how should we take into account our proposed reclassification in our proposals with respect to pole attachments and our inquiries with respect to preemption under section 253 of the Act? How should the Broadband Deployment Advisory Committee factor in the reduced regulatory burdens and increased investment that we anticipate will flow from reclassification? More generally, if broadband Internet access service is classified as an interstate information service, how would that impact jurisdiction? We encourage commenters to offer specific recommendations as to how we can leverage our proposed reclassification in other proceedings to further encourage broadband deployment to all Americans.

III. A Light-Touch Regulatory Framework

53. Proposing to restore broadband Internet access service to its long-established classification as an information service reflects our commitment to a free and open Internet. Indeed, our lead proposal reaffirms the long-standing, bipartisan consensus begun in the Clinton Administration by restoring the Internet to the dynamic state that allowed it to flourish prior to the *Title II Order.* To determine how to best honor our commitment to restoring the free and open Internet, we propose re-evaluating the Commission's existing rules and enforcement regime to analyze whether *ex ante* regulatory intervention in the market is necessary. To the extent we decide to retain any of the Commission's *ex ante* regulations, we seek comment on whether, and how, we should modify them, specifically considering different approaches such as self-governance or *ex post* enforcement that may effectuate our goals better than across-the-board rules. Finally, we discuss the Commission's legal authority to adopt rules governing Internet service provider practices.

A. Re-Evaluating the Existing Rules and Enforcement Regime

54. Below, we explore the best method to restore the long-standing consensus under both Democratic and Republican-led Commissions, represented by the four Internet Freedoms, that consumers should have access to the content, applications, and devices of their choosing as well as meaningful information about their service, all without deterring the investment and innovation that has allowed the Internet to flourish. We examine these freedoms and the Commission's current rules related to them, and for each, ask whether we should keep, modify, or eliminate them.

1. Eliminating the Internet Conduct Standard

55. In the *Title II Order,* the Commission created a catch-all standard intended to prohibit ''current or future practices that cause the type of harms [the Commission's] rules are intended to address.'' This standard allows the Commission to prohibit practices that it determines unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the Internet content, services, and applications of their choosing or of online content, applications, and service providers to access consumers. This standard also gives the Commission discretion to prohibit any Internet service provider practice that it believes violates any one of the non-exhaustive list of factors adopted in the *Title II Order.*

56. We propose eliminating this Internet conduct standard and the non-exhaustive list of factors intended to guide application of the rule, and we seek comment on this proposal. What are the costs of the present Internet conduct standard and implementing factors? Do the standard and its implementing factors provide carriers with adequate notice of what they are and are not allowed to do? Does the standard benefit consumers in any way and, if so, how? We believe that eliminating the Internet conduct standard will promote network investment and service-related innovation by eliminating the uncertainty caused by vague and undefined regulation. Do commenters agree?

57. Because the Internet conduct standard is premised on theoretical problems that will be adjudicated on an individual, case-by-case basis, Internet service providers must guess at what they are permitted and not permitted to do. The now-retracted so-called Zero Rating Report issued by the Wireless Telecommunications Bureau illustrates the dilemma providers experience under a Title II regulatory regime. After a thirteen-month investigation, the Report did not specifically call for an end to any provider's practices or identify any particular harm from offering consumers free data. Instead, it stated that the free-data plans ''may raise'' economic and public policy issues that ''may harm consumers and competition.'' It then reiterated that any determination about the harm from free data offerings would be made by the Commission on a ''case-by-case'' basis, using a ''non-exhaustive list of factors.'' Instead of giving providers clear rules of the road to govern future conduct, this report put a provider on notice that an enforcement action could be just around the corner. The Report, and the investigation that preceded it, left Internet service providers with two options: Either wait for a regulatory enforcement action that could arrive at some unspecified future point or stop providing consumers with innovative offerings. We seek comment on whether this roving mandate has impacted innovation, and what impact that has had on consumers. We seek comment on whether eliminating this vague standard will spur innovation and benefit consumers.

58. We propose not to adopt any alternatives to the Internet conduct rule, and we seek comment on this proposal. Is there a need for any general non-

discrimination standard in today's Internet marketplace? If so, what would that general non-discrimination standard be? The *2014 Notice* proposed prohibiting ''commercially unreasonable practices.'' Should we consider that alternative? Or should we consider another general rule and framework (such as Commission adjudication of non-discrimination complaints)? If we adopt our proposals to eliminate the Internet conduct standard and not to adopt any alternative general requirement, we seek comment on how we can encourage innovative business models that give consumers more choices and lower prices while also promoting consumer freedom on the Internet.

2. Determining the Need for the Bright Line Rules and the Transparency Rule

59. In the *Title II Order,* despite virtually no quantifiable evidence of consumer harm, the Commission nevertheless determined that it needed bright line rules banning three specific practices by providers of both fixed and mobile broadband Internet access service: Blocking, throttling, and paid prioritization. The Commission also ''enhanced'' the transparency rule by adopting additional disclosure requirements. Today, we revisit these determinations and seek comment on whether we should keep, modify, or eliminate the bright line and transparency rules.

60. At the outset of our review of the Commission's existing rules, we seek comment on whether *ex ante* regulatory intervention in the market is necessary in the broadband context. Beyond the few, scattered anecdotes cited by the *Title II Order,* have there been additional, concrete incidents that threaten the four Internet Freedoms sufficient to warrant adopting across-the-board rules? Is there any evidence of market failure, or is there likely to be, sufficient to warrant pre-emptive, comprehensive regulation? How have marketplace developments impacted the incentive and ability, if any, of broadband Internet access service providers to engage in conduct that is contrary to the four Internet Freedoms? Must we find that market power exists to retain rules in this space, and if so must the rules only apply to providers that have market power? Further, should any approach we adopt—whether *ex ante* rules, expectations regarding industry self-governance, or *ex post* enforcement practices—vary based on the size, financial resources, customer base of the broadband Internet access service provider, and/or other factors? Specifically, we seek comment on whether rules are necessary for or burdensome on smaller providers.

61. The Commission partially justified the 2015 rules on the theory that the rules would prevent anti-competitive behavior by ISPs seeking to advantage affiliated content. With the existence of antitrust regulations aimed at curbing various forms of anticompetitive conduct, such as collusion and vertical restraints under certain circumstances, we seek comment on whether these rules are necessary in light of these other regulatory regimes. Could the continued existence of these rules negatively impact future innovative, pro-competitive business deals that would not by themselves run afoul of merger conditions or established antitrust law?

62. In addition, the D.C. Circuit majority that reviewed the *Title II Order* stated that ''[i]f a broadband provider . . . were to choose to exercise editorial discretion—for instance, by picking a limited set of Web sites to carry and offering that service as a curated internet experience,'' then the *Title II Order* ''excludes such [a] provider[ ] from the rules.'' Given that an ISP can avoid Title II classification simply by blocking enough content, are the purported benefits of the existing rules more illusory than they initially appear? By disclosing to consumers that it is offering a ''curated internet experience,'' can an ISP escape from the ambit of the rules entirely? We seek comment on the implications of the D.C. Circuit's observation.

63. *Need for the No-Blocking Rule.* We emphasize that we oppose blocking lawful material. The Commission has repeatedly found the need for a no-blocking rule on principle, asserting that ''the freedom to send and receive lawful content and to use and provide applications and services without fear of blocking is essential to the Internet's openness.'' We merely seek comment on the appropriate means to achieve this outcome consistent with the goals of maintaining Internet freedom, maximizing investment, and respecting the rule of law. We seek comment on whether a codified no-blocking rule is needed to protect such freedoms. For example, prior to 2015, many large Internet service providers voluntarily abided by the 2010 no-blocking rule in the absence of a regulatory obligation to do so. Do we have reason to think providers would behave differently today if the Commission were to eliminate the no-blocking rule? Is the no-blocking rule necessary for or burdensome on smaller providers?

64. We seek comment on the continuing need for a no-blocking rule. The no-blocking rule, originally adopted in 2010, invalidated by the *Verizon* court, and re-adopted in the *Title II Order,* prohibits Internet service providers from blocking competitors' content by mandating that a customer has a right to access lawful content, applications, services, and to use non-harmful devices, subject to reasonable network management.

65. If we determine that a no-blocking rule is indeed necessary to ensure a free, open, and dynamic Internet, what are the best means to achieve this outcome consistent with the goals of maintaining Internet freedom and maximizing investment? Should we consider modifying the existing no-blocking rule to better align with our proposed legal classification of broadband Internet access service as an information service? The *Verizon* court made clear that the Commission's 2010 no-blocking rule impermissibly subjected Internet service providers to common-carriage regulation. We seek comment on whether there are other formulations of a no-blocking rule that are consistent with our proposed legal classification of broadband Internet access service as an information service and for which we would have legal authority.

66. *Need for the No-Throttling Rule.* In the *Title II Order,* the Commission concluded that throttling was a sufficiently severe and distinct threat that it required its own, separate, codified rule. The no-throttling rule mirrors the no-blocking rule and bans the impairment or degradation of lawful Internet traffic or use of a non-harmful device, subject to reasonable network management practices. We seek comment on whether this rule is still necessary, particularly for smaller providers. How does the rule benefit consumers, and what are its costs? When is ''throttling'' harmful to consumers? Does the no-throttling rule prevent providers from offering broadband Internet access service with differentiated prioritization that benefits consumers? Does the no-throttling rule harm latency-sensitive applications and content? Does it prevent product differentiation among ISPs? If we eliminate the no-blocking rule, should we also eliminate the no-throttling rule? If we determine that a no-throttling rule is indeed necessary to ensure a free, open, and dynamic Internet, are there ways in which we could modify the no-throttling rule so it aligns with our proposed legal classification of broadband Internet access service as an information service and for which we would have legal authority?

67. The Commission justified the separate, codified no-throttling rule on

the theory of preventing anti-competitive behavior for broadband Internet access providers' affiliated content. With the existence of antitrust and other regulations aimed at curbing collusion, we seek comment on whether a no-throttling rule is duplicative of these other regulatory regimes. Could the continued existence of this rule negatively impact future innovative, pro-competitive business deals that would not by themselves run afoul of merger conditions or established antitrust law?

68. *Need for the No Paid Prioritization Rule.* The Commission concluded in the *Title II Order* that ''fast lanes'' or ''paid prioritization'' practices ''harm consumers, competition, and innovation, as well as create disincentives to promote broadband deployment.'' The Commission adopted this *ex ante* flat ban on individual negotiations to address an apparently nonexistent problem. The ban on paid prioritization did not exist prior to the *Title II Order* and even then the record evidence confirmed that no such rule was needed since several large Internet service providers made it clear that that they did not engage in paid prioritization and had no plans to do so. We seek comment on the continued need for such a rule and our authority to retain it.

69. What are the trade-offs in banning business models dependent on paid prioritization versus allowing them to occur when overseen by a regulator or industry actors? Is there a risk that banning paid prioritization suppresses pro-competitive activity? For example, could allowing paid prioritization give Internet service providers a supplemental revenue stream that would enable them to offer lower-priced broadband Internet access service to end-users? What would be the impacts on new startups and innovation? Does a no-paid-prioritization rule harm the development of real-time or interactive services? Could allowing paid prioritization enable certain critical information, such as consumers' health care vital signs that are being monitored remotely, to be transmitted more efficiently or reliably? What other considerations mitigate any potential negative impacts from business models like paid prioritization? Should the Commission impose restrictions on these business models at all?

70. We seek comment on current traffic delivery arrangements online. How do content, application, and service providers host their data online? Do they rely on installing their own servers in data centers, content delivery networks, or cloud-based hosting? What are the varying service characteristics of these options and their varying costs? It appears that some larger online content providers like Netflix host their own data centers and interconnect directly with Internet service providers. Is that still true? What are the service characteristics and costs of this option? How should the existence of these arrangement impact our evaluation of whether Internet service providers should be able to offer an alternative delivery option such paid prioritization?

71. For those parties that believe an *ex ante* flat ban on paid prioritization is necessary, are there other formulations of a no-paid-prioritization rule that are consistent with our proposed legal classification of broadband Internet access service as an information service and for which we would have legal authority? Are there any other formulations that are consistent with allowing pro-competitive or pro-consumer paid prioritization arrangements? Would we need to modify the rule and, if so, how?

72. *Need for the Transparency Rule.* We seek comment on whether to keep, modify, or eliminate the transparency rule. When the Commission adopted the transparency rule in 2010 and enhanced it in 2015, it found that ''effective disclosure of Internet service providers' network management practices, performance, and commercial terms of service promotes competition, innovation, investment, end-user choice, and broadband adoption.'' We continue to support these objectives and seek comment on whether the existing transparency rule is the best way to accomplish them, or if there are other methods we can employ to achieve the goals of competition, innovation, investment, end-user choice, and broadband adoption.

73. Although we agree that the disclosure requirements were among some of the least intrusive regulatory measures imposed by the *Title II Order,* we seek comment on whether the additional reporting obligations from that rule remains necessary in today's competitive broadband marketplace. What are the benefits and drawbacks of those additional reporting obligations? Is the length of time necessary to obtain approval of these rules, first adopted in February 2015 and yet not going into effect until nearly two years later, illustrative of just how burdensome the new enhancements are in comparison to the 2010 rule? Would the original transparency rule, which has been continuously operational since it came into effect following adoption of the *Open Internet Order,* be sufficient to protect consumers? Although the *Verizon* court upheld the 2010 transparency rule, we seek comment on our authority to retain the 2015 ''enhancements'' or to modify the transparency rule in a manner distinct from the *Open Internet Order* or *Title II Order.* For example, does the full and accurate disclosure of service plan information to consumers carry with it most of the benefits of the rule? How often do non-consumers rely on the additional disclosures required by the transparency rule? Are those additional benefits worth the additional cost of compliance, especially for small businesses?

74. Assuming we find a transparency rule necessary, how should we treat the additional guidance related to the transparency rule? For example, should we continue to enforce guidance from the Commission's Chief Technology Officer regarding acceptable methodologies for disclosure of network performance to satisfy the enhanced transparency rule? Is there merit in continuing to promote the broadband consumer labels that provided ISPs with a safe harbor—or do those standardized notices harm consumers by preventing them from obtaining additional information? Does the repeated need for advisory guidance following the original 2010 transparency rule indicate that the rule itself is too open-ended?

3. Additional Considerations Applicable to Existing Rules

75. Should we decide to keep or modify any of our existing open Internet rules, we propose and seek comment on several issues related to their continued operation.

76. *Scope.* Should we keep any of the existing bright-line rules or the transparency rule, we propose maintaining the definitions of the services applicable to the rules, the scope of the term ''lawful content,'' the exception for reasonable network management, and other provisions adopted in the *Title II Order* so as not to impact ISPs rights or obligations with respect to other laws or safety and security considerations. Reasonable network management ''allow[s] service providers the freedom to address legitimate needs such as avoiding network congestion and combating harmful or illegal content'' without running afoul of the rules. With respect to the definition of ''reasonable network management,'' we seek comment on whether we should eliminate the restriction imposed by the *Title II Order* that the exception will only be considered if used for a ''technical management justification rather than other business justifications,'' or if we

should return to the 2010 definition of ''reasonable network management'' that did not contain that qualifier.

77. For the reasonable network management exception and definition of non-broadband Internet access service data services that fall outside the scope of the rules, we seek comment on how we should view any additional guidance explaining those terms as set forth in the *Title II Order,* but not codified as part of the rules. Should we follow the case-by-case approach taken for evaluating reasonable network management? For non-broadband Internet access service data services, should we adhere to the characteristics of non-broadband Internet access service data services described in the *Title II Order*? Or, should we revert to the general concept of non-broadband Internet access service data services discussed in the *Open Internet Order* (and then known as ''specialized services'')? Further, for non-broadband Internet access service data services, should we eliminate the guidance that if non-broadband Internet access service data services ''are undermining investment, innovation, competition, and end-user benefits,'' then the Commission will take enforcement action—including the particularized focus on ensuring that ''over-the-top services offered over the Internet are not impeded in their ability to compete with other data services?''

78. *Application to Mobile.* To the extent we keep or modify any of the existing rules, we seek comment on whether mobile broadband should be treated differently from fixed broadband. The *Title II Order* applied the Internet openness rules equally to both fixed and mobile broadband Internet access services. This approach departed from the *Open Internet Order*'s framework, which adopted a different no-blocking standard for mobile broadband Internet access service and excluded mobile from the no unreasonable discrimination rule. Are there legal, technical, economic, and/or policy reasons to distinguish mobile and fixed broadband with respect to rules in this context, and if so how should we differentiate the two in any rules that we keep or modify? For instance, several mobile providers who opposed application of the broader rules in 2015 argued that additional rules were unnecessary because competition for mobile broadband service adequately restrained the behavior of mobile Internet service providers. We seek comment on whether this contention is correct in today's marketplace.

4. Enforcement Regime

79. Should we keep or modify any of the Commission's existing rules discussed above, we seek comment on how we should enforce them. In the *Open Internet Order* the Commission set forth procedures for filing both informal and formal complaints. Commission rules currently provide for filing fees in the case of complaints to enforce Part 8 rules governing broadband Internet access service and in the case of data roaming complaints. Would those rules need to be modified in the event that we reclassify broadband Internet access service? Could some rules subject to those complaint procedures remain? Are there other similar issues the Commission would need to address? The *Title II Order* also allowed the Enforcement Bureau to issue advisory opinions and enforcement advisories, and it created an ombudsperson position to provide effective access to dispute resolution. We seek comment on whether advisory opinions or enforcement advisories have benefitted consumers or broadband Internet access service providers. If we restore the broadband Internet access service classification to an information service, should that alter our complaint and enforcement process in this context?

80. Additionally, we seek comment on streamlining future enforcement processes. For instance, we propose eliminating the ombudsperson role. Is the role of an ombudsperson necessary to protect consumer, business, and other organizations' interests when the Commission has a Bureau—the Consumer and Governmental Affairs Bureau (CGB)—dedicated to protecting consumer interests? Our experience suggests that consumers are comfortable working with CGB, and typically did not call on the ombudsperson specifically. Has the ombudsperson been called to action to assist in circumstances that otherwise could not have been handled by CGB?

81. What have been the benefits and drawbacks of the complaint procedures instituted in 2010 and 2015? Since these rules were formally codified in 2010, only one formal complaint has been filed under them to date. Can we infer that parties heeded the Commission's encouragement to ''resolve disputes through informal discussions and private negotiations'' without Commission involvement, except through the informal complaint process? Does the lack of formal complaints indicate that dedicated, formal enforcement procedures are unwarranted? If we restore broadband Internet access service's classification as an information service, should that alter our complaint and enforcement process in this context? If so, in what way should the processes be altered? Are there methods other than formal complaints we can employ to ensure a free and open Internet?

82. In addition to the enforcement regime, the *Title II Order* delegated authority to several Bureaus and Offices to make further decisions involving the rules following their adoption. For example, the *Title II Order* delegated authority to the Chief Technologist to provide guidance under the transparency rule and further delegated authority to several Bureaus to determine whether the safe harbor disclosures under the transparency rule aligned with the Commission's expectations. If we determine there is no need for the existing transparency rule or enforcement regime, then we believe that the technological and safe harbor guidance would become irrelevant. We also believe that the safe harbor disclosure guidance would be rendered moot. We seek comment on this analysis and on whether there nonetheless are any affirmative steps the Commission should take with respect either to those delegations of authority or to actions already taken in reliance on that delegated authority.

B. Legal Authority To Adopt Rules

83. We seek comment on the legal authority that the Commission would have in this area if we adopted our lead proposal to classify broadband Internet access service as an information service.

84. *Section 706.* We seek comment on whether section 706(a) and (b) of the 1996 Act are best interpreted as hortatory rather than as delegations of regulatory authority. Such an interpretation generally is reflected in the Commission's approach to section 706 prior to 2010. The text of these provisions also appears more naturally read as hortatory, particularly given the lack of any express grant of rulemaking authority, authority to prescribe or proscribe the conduct of any party, or to enforce compliance. Although some courts have held that the Commission's post-2010 interpretation of section 706(a) and/or (b) as a grant of regulatory authority was not unreasonable, we seek comment on whether interpreting those provisions as hortatory nonetheless is the better reading. Or should we maintain our post-2010 interpretation of these provisions? Alternatively, we seek comment whether section 706 reflects a ''deregulatory bent,'' and, if so, how we should interpret that with respect to obligations for regulated entities. If section 706 reflects a deregulatory

emphasis, what authority does it give the Commission, particularly in situations in which capital expenditures by Internet service providers have slowed, as they have in the past year under Title II regulation? If we interpret section 706(a) as a grant of authority, does that mean state commissions would have coequal authority? If we interpret section 706(b) as a grant of authority, what would happen to any rules adopted using that authority if the Commission later found that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion? Are there other interpretations of section 706 of the 1996 Act that we should consider?

85. *Section 230.* We also seek comment on whether section 230 gives us the authority to retain any rules that were adopted in the *Title II Order.* In *Comcast,* the D.C. Circuit observed that the Commission there ''acknowledge[d] that section 230(b)'' is a ''statement [ ] of policy that [itself] delegate[s] no regulatory authority.'' Are there grounds for the Commission to revisit that interpretation or otherwise invoke section 230 here? For example, the D.C. Circuit in *Comcast* speculated that ''[p]erhaps the Commission could use section 230(b) . . . to demonstrate . . . a connection'' to an ''express statutory delegation of authority,'' although it had not done so there. If the Commission were to demonstrate a connection to an express statutory delegation of authority, what would such a demonstration look like? What, if any, express statutory delegations of authority over broadband Internet access service exist?

86. *Other Sources of Legal Authority.* Should we determine rules are indeed necessary in this space, we seek comment on any other sources of independent legal authority we might use to support such rules. For example, we seek comment on the Communications Act authority cited by the Commission in its *Open Internet Order.* If any other sources of legal authority exist, to what extent could they be used? And, what are the trade-offs, including the advantages and disadvantages, of using any of these other sources of legal authority in lieu of Title II provisions that depend on the classification of broadband Internet access service as a telecommunications service and/or section 706 of the 1996 Act?

87. *Constraints on our Legal Authority.* The Commission has repeatedly recognized that adopting rules like these raises constitutional concerns. For example, some petitioners in the *USTelecom* v. *FCC* case argued that compelling an Internet service provider to carry all speech violates the First Amendment. Others have argued that ''[t]here is no principled basis for distinguishing the speech of broadband providers from other speakers using older technologies.'' The D.C. Circuit Court of Appeals disagreed, finding that ''the First Amendment poses no bar to the rules.'' However, at least one judge on the D.C. Circuit believes that the Commission's current ''net neutrality rule violates the First Amendment to the U.S. Constitution . . . . [because] the First Amendment bars the Government from restricting the editorial discretion of Internet service providers, absent a showing that an Internet service provider possesses market power in a relevant geographic market.'' We seek comment on whether the First Amendment or any other constitutional provision, or any other federal law, would constrain the Commission from adopting rules here. If a rule poses serious constitutional concerns, how should we modify it? Does the continued classification of broadband Internet access service as a common-carriage service itself raise any constitutional concerns?

C. Cost-Benefit Analysis

88. We propose as part of this proceeding to conduct a cost-benefit analysis (CBA). We propose to compare the costs and the benefits of maintaining the classification of broadband Internet access service as a telecommunications service (*i.e.* Title II regulation); (Throughout this section, when discussing maintaining broadband Internet access service as a telecommunications service, we mean as actually implemented by the *Title II Order,* where the Commission forbore from applying some sections of the Act and some Commission rules) maintaining the Internet conduct rule; maintaining the no-blocking rule; maintaining the no-throttling rule; maintaining the ban on paid prioritization; maintaining the transparency rules; and acting on the other interpretive and policy changes for which we seek comment above. We seek comment on how the CBA should be conducted to appropriately separate or combine the analyses of each piece discussed above. We also seek comment generally on the importance of conducting a CBA as well as the interaction between the Commission's public interest standard and a weighing of the costs and benefits.

89. Given the size of the economic impacts due to our decisions in this proceeding, it is especially important to evaluate whether the decision will have net positive benefits. Our presumption is that the effects of the decision would have an annual effect on the economy of *at least* $100 million which is the federal government's standard threshold for requiring agencies covered by Executive Order 12866 to conduct a regulatory analysis. (A ''regulatory analysis'' has three key components: (1) A statement of the need for a proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and the costs). The other parts of this *NPRM* effectively seek comment on the first and second pieces of the regulatory analysis). Executive Order 12866 indicates regulatory actions are economically significant if they ''[h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' While the Commission is not required by law to comply with this Executive Order, we believe the $100 million threshold provides a helpful guideline for when a CBA is clearly appropriate. (While we believe it is clearly appropriate for actions in excess of $100 million, we make no suggestion here about whether the Commission should conduct CBAs below that threshold). We seek comment on our assertion that conducting a CBA is appropriate and that the decision is likely to be economically significant.

90. In conducting the CBA, we propose to follow standard practices employed by the federal government. Specifically we propose to follow the guidelines in section E (''Identifying and Measuring Benefits and Costs'') of the Office of Management and Budget's Circular A–4. This publication provides guidelines that an agency can follow for identifying and quantifying costs and benefits associated with regulatory decisions while allowing for appropriate latitude in how the analysis is conducted for a particular regulatory situation. We seek comment on following Circular A–4 generally. We also seek comment on any specific portions of Circular A–4 where the Commission should diverge from the guidance provided. Commenters should explain why particular guidance in Circular A–4 should not be followed in this circumstance and should propose alternatives.

91. Any CBA should be conducted by comparing the costs and benefits relative to the ''baseline'' scenario. As OMB Circular A–4 explains, ''[t]his baseline should be the best assessment

of the way the world would look absent the proposed action.'' Care should be taken to recognize that in certain cases repealing or eliminating a rule does not result in a total lack of regulation but instead means that other regulations continue to operate or other regulatory bodies will have authority. For example, as we evaluate the costs and benefits of maintaining the current classification of broadband Internet access service as a telecommunications service, the CBA should recognize that changing the classification of broadband Internet access service to an information service would result in the FTC having jurisdiction over certain aspects of such services. Therefore, the benefits and costs of the FCC maintaining Title II jurisdiction over broadband Internet access service should be calculated with FTC enforcement as the appropriate baseline. In this example, the benefits of maintaining the Commission's Title II classification are those benefits that exist over and above the ''baseline'' scenario of FTC jurisdiction (and, at a minimum, FCC Title I protections). Likewise, the costs of maintaining Title II should be estimated as those costs of *ex ante* FCC regulation relative to FTC *ex post* regulation. We seek comment on the appropriate baseline scenarios that should be used and on our proposed course of action above.

92. In weighing the costs and benefits of any policy, there always exists an element of uncertainty. As commenters suggest costs and benefits the Commission should consider, we ask that to the extent possible information could also be provided about the level of certainty surrounding a scenario or particular value. Also, various costs and benefits are likely to occur at different points in time. When suggesting costs and benefits, we seek comment on the timing of those costs and benefits. (As explained in OMB Circular A–4, section E, the timing of costs and benefits is important because ultimately the CBA will need to discount future costs and benefits for the purpose of calculating net present benefits.) We also seek comment on how uncertainty around and timing of costs and benefits should interact in the analysis.

93. *Costs.* There is evidence that the actions taken by the Commission in the *Title II Order* have reduced investments by ISPs. We presume that maintaining those actions would depress investment relative to the baseline. Many of the costs of lower or misallocated investment in networks and in other sectors of the digital economy will be due to consumers and businesses having less broadband Internet access service coverage and lower quality of service. Since the networks built with capital investments are only a means to an end, we believe that the private costs borne by consumers and businesses of maintaining the *status quo* result from decreased value derived from using the networks. We seek comment on this analysis. What approaches should we use to capture these costs? We seek comment on particular methods and data sources we might use to estimate the private costs of forgoing the building, maintaining, or upgrading of these networks.

94. In addition to the private costs discussed above, foregone networks may also impose additional societal costs. In particular, fewer network effects created by increased connectivity will occur. As another example, society will not realize some efficiencies and savings from governments delivering services over the networks. Additionally, there are likely long run costs due to forgoing better connectivity that would allow new products and services to be created. We seek comment on this analysis. How should our CBA incorporate these types of cost into the analysis? What other ancillary costs might exist? What data is appropriate to use?

95. It is also likely that the foregone investment *per se* results in economic costs (*e.g.,* fewer network construction jobs), and we seek comment on how the Commission should incorporate any of these costs into the analysis. For example, should the Commission use a multiplier to account for economic activity missed due to tempered investment? If so, what are the appropriate multipliers to use? Commenters should provide sources to justify recommendations for multiplier values.

96. Lastly, there may be other costs that are not directly the result of decreased investment in networks. Maintaining current policies may prevent new business models or new products and services from being viable and ultimately delivering value to society. We seek comment on such costs and how we may incorporate them into our analysis.

97. *Benefits.* There are various theoretical possibilities for economic benefits created by the current policies. We therefore seek comment on these benefits. Commenters should identify these benefits relative to an appropriate baseline, not relative to a situation where there is no regulation or statute to govern behavior. For example, if the ban on paid prioritization is maintained but broadband Internet access service is classified as an information service, then commenters should identify the benefits a blanket ban on paid prioritization carries over the FTC's authority to police anticompetitive conduct.

98. We particularly seek comments that attempt to quantify the benefits rather than merely suggest the existence of benefits without any indication of their magnitude. We also ask commenters to particularly highlight benefits where *actual* misconduct has been observed. To the extent the baseline scenario allows any market failures to go unregulated, commenters should clearly identify the market failure and the estimated economic benefit associated with addressing it through the maintenance of current policies.

IV. Initial Regulatory Flexibility Analysis

99. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

100. With this NPRM, the Commission initiates a new rulemaking that proposes to restore the market-based policies necessary to preserve the future of Internet Freedom, and to reverse the decline in infrastructure investment, innovation, and options for American consumers put into motion by the Commission in 2015. The Commission's *Title II Order* has put at risk online investment and innovation, threatening the very open Internet it purported to preserve. Investment in broadband networks declined. Internet service providers (ISPs) have pulled back on plans to deploy new and upgraded infrastructure and services to consumers. This is particularly true of the smallest Internet service providers that serve consumers in rural, low-income, and other underserved communities. This rulemaking continues the critical work to promote

broadband deployment to rural consumers and infrastructure investment throughout our nation, to brighten the future of innovation both within networks and at their edge, and to close the digital divide.

101. The NPRM sets forth the following three main proposals: Returning broadband Internet access service to its previously-settled classification as an information service, restoring the definition of ''public switched telephone network'' to its original meaning, and eliminating the Internet conduct standard. The NPRM also seeks comment on a variety of issues relating to the effects of the Commission's *Title II Order,* including the burdens imposed by the *Title II Order* that have led to decreased investment and reduced innovation and have been felt by Internet service providers (ISPs) and consumers. Additionally, the NPRM seeks comment on the effects of reclassifying broadband Internet access service as an information service on the existing enforcement regime and the necessity of the other rules adopted in the *Title II Order.* Specifically, the NPRM seeks comment on the usefulness and necessity of the no-blocking rule, the no-throttling rule, the no paid prioritization rule, and the transparency rule.

B. Legal Basis

102. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 3, 10, 201(b), 230, 254(e), 303(r), 332, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 153, 160, 201(b), 254(e), 303(r), 332, 1302.

C. Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

103. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

1. Total Small Entities

104. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

2. Broadband Internet Access Service Providers

105. The proposed rules would apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $32.5 million or less. These are labeled non-broadband. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. For the second category, census data for 2012 show that there were 1,442 firms that operated for the entire year Of those firms, a total of 1,400 had annual receipts less than $25 million. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

106. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

3. Wireline Providers

107. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

108. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

109. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

110. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

111. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

112. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

113. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

114. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the NPRM.

4. Wireless Providers—Fixed and Mobile

115. The broadband Internet access service provider category covered by these proposed rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or

reportable eligibility events, unjust enrichment issues are implicated.

116. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

117. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

118. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

119. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

120. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

121. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

122. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

123. *Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

124. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80

channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

125. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

126. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

127. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

128. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

129. *700 MHz Guard Band Licenses.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

130. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

131. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for

these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

132. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

133. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

134. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

135. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

136. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

5. Satellite Service Providers

137. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. Both categories have a small business size standard of $32.5 million or less in average annual receipts, under SBA rules.

138. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

139. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

6. Cable Service Providers

140. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

141. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*.e.g.* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

142. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

143. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. All Other Telecommunications

144. *Electric Power Generators, Transmitters,* and *Distributors.* This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

145. As indicated above, the NPRM seeks comment on modifications to the Commission's existing no-blocking rule, no-throttling rule, no paid prioritization rule, and transparency rule, and it proposes eliminating the Internet conduct standard. While we anticipate that the removal or modification of burdensome regulations will lead to a

long-term reduction in reporting, recordkeeping, or other compliance requirements on some small entities, the potential modifications, if adopted, could initially impose additional reporting, recordkeeping, or other compliance requirements on some small entities. We seek comment on any other potential effects that could result from the changes proposed in the *NPRM,* particularly as they relate to small businesses.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

146. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

147. The *NPRM* specifically seeks comment on the reporting requirements imposed by the enhanced transparency rule, and whether modifying that rule would alleviate any regulatory burdens. Additionally, we believe that the proposals contained within this *NPRM* represent a significant consolidation and simplification for small entities from the rules imposed by the *Title II Order.* The rules imposed by the *Title II Order* created heavy compliance burdens, and those burdens were particularly onerous for smaller providers without dedicated compliance staffs. By proposing the elimination of the general conduct standard, and seeking comment on the other rules imposed by the *Title II Order,* the *NPRM* attempts to understand and mitigate the negative effects the *Title II Order* had on small businesses. More generally, by proposing to return to an information service classification for broadband Internet access services, the *NPRM* seeks to reduce the burdens that Title II classification imposed.

148. The Commission also expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding. We note that numerous small providers have already filed comments with the Commission expressing their support for the Commission's proposed changes.

149. We seek comment here on the effect the various proposals described in the NPRM, and summarized above, will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of protecting and promoting an open Internet while also imposing minimal burdens on small entities? We specifically note that within this *NPRM,* we have sought comment on the effects on small business of the disclosures required by the transparency rule, and we have emphasized the outsize regulatory burdens that Title II reclassification has placed on small internet providers. What other specific steps could the Commission take in this regard?

150. Since this *NPRM* seeks to reduce the compliance burdens of ISPs through the removal of unnecessary regulation, it does not propose any alternative methods of reducing those burdens. However, we seek comment from interested parties or any potential method of reducing compliance burdens and restoring Internet freedom that has not been proposed in this *NPRM.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

151. None.

V. Procedural Matters

A. Initial Regulatory Flexibility Analysis

152. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this *NPRM of Proposed Rulemaking,* of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates on the first page of this *NPRM of Proposed Rulemaking.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Initial Paperwork Reduction Act Analysis

153. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Other Procedural Matters

1. Ex Parte Rules—Permit-But-Disclose

154. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize

themselves with the Commission's *ex parte* rules.

VI. Ordering Clauses

155. Accordingly, *it is ordered* that, pursuant to sections 3, 10, 201(b), 230, 254(e), 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 153, 160, 201(b), 254(e), 303(r), 332, 1302, this Notice of Proposed Rulemaking *is adopted.*

156. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before July 17, 2017 and reply comments on or before August 16, 2017.

157. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 8

Protecting and promoting the open internet.

47 CFR Part 20

Commercial mobile services.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer. Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 8 and 20 as follows:

PART 8—PROTECTING AND PROMOTING THE OPEN INTERNET

§ 8.11 [Remove and Reserve].

■ 1. Remove and reserve § 8.11.

PART 20—COMMERCIAL MOBILE SERVICES

■ 2. Amend § 20.3 by revising paragraph (b) under the definition of ''Commercial mobile radio service;'' paragraph (a) under the definition of ''Interconnected Service;'' and the definition of ''Public Switched Network'' to read as follows:

§ 20.3 Definitions.

* * * * *

(b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

* * * * *

(a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

* * * * *

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

* * * * *

[FR Doc. 2017–11455 Filed 6–1–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17–106; FCC 17–59]

Elimination of Main Studio Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to eliminate its rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license. The Commission tentatively finds that the main studio rule is now outdated and unnecessarily burdensome for broadcast stations. The Commission also proposes to eliminate existing requirements associated with the main studio rule, including the requirement that the main studio must have full-time management and staff present during normal business hours, and that it must have program origination capability.

DATES: Comments are due on or before July 3, 2017; reply comments are due on or before July 17, 2017.

ADDRESSES: You may submit comments, identified by MB Docket No. 17–106, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17–59, adopted and released on May 18, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), we propose to eliminate the Federal Communications Commission (Commission) rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.[1] When the rule was conceived almost eighty years ago, local access to the main studio was designed to facilitate input from community members as well as the station's participation in community activities. Today, however, widespread availability of electronic communication enables stations to participate in their

[1] 47 CFR 73.1125(a) through (d).

communities of license, and members of the community to contact broadcast radio and television stations, without the physical presence of a local broadcast studio. In addition, because the Commission has adopted online public inspection file requirements for AM, FM, and television broadcast stations, community members no longer will need to visit a station's main studio to access its public inspection file. Television broadcasters completed their transition to the online public file in 2014, and radio broadcasters will complete their transition by March 1, 2018.[2] Given these changes, in this proceeding we tentatively find that the main studio rule is now outdated and unnecessarily burdensome for broadcast stations and propose to eliminate it. We also propose to eliminate existing requirements associated with our main studio rule.[3]

2. We propose to eliminate our rule requiring each AM, FM,[4] and television broadcast station to maintain a local main studio.[5] We also propose to eliminate the associated staffing and program origination capability requirements that apply to main studios. We tentatively conclude that technological innovations have rendered a local studio unnecessary as a means for viewers and listeners to communicate with or access their local stations and to carry out the other traditional functions that they have served. In particular, it appears that a local main studio with staffing sufficient to accommodate visits from community members no longer will be justified once broadcasters fully transition to online public inspection files. We invite comment on these proposals.

3. We also seek comment on the costs that AM, FM, and television broadcast stations face in complying with the current main studio rule and associated requirements. How significant are these costs, particularly for small stations? Would eliminating the main studio rule, as well as the associated staffing and program origination capability requirements, enable broadcasters to allocate greater resources to programming and other matters? Would eliminating the rule make it more efficient for co-owned or jointly operated broadcast stations to co-locate their offices, rather than operating a main studio in or near each station's community of license? We invite comment on these and other efficiencies that could be achieved by eliminating the main studio rule. Are there any particular issues we should be aware of with regard to eliminating the main studio rule for non-commercial broadcast stations?

4. How frequently do stations receive in-person visits from members of the community, and are those visits to request access to hard copy public inspection files or for other purposes? To what extent do people contact stations by telephone, by mail, or online, rather than through in-person visits? Have technological advances, including widespread access to the Internet, mobile telephones, email, and social media, obviated the need to accommodate in-person visits from community members? If we eliminate the main studio rule, would competitive market conditions ensure that stations will continue to keep apprised of significant local needs and issues? Would eliminating the main studio rule impact a station's ability to communicate time-sensitive or emergency information to the public? If the existence of a local main studio no longer plays a significant role in ensuring that broadcast stations serve their local communities, then eliminating the main studio requirement likely will not significantly impact the requirement that the Commission ''make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same.'' [6] We seek comment on whether the current main studio rules and related requirements are necessary to implement section 307(b) of the Communications Act of 1934, as amended. Relatedly, we ask commenters to describe any remaining benefits of the main studio requirements and the associated staffing requirements.

5. Although the Commission eliminated its program origination requirement in 1987, it subsequently clarified that stations must nonetheless ''equip the main studio with production and transmission facilities that meet applicable standards [and] maintain continuous program transmission capability . . . [to] allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio.'' We invite comment on the continued relevance of the program origination capability requirement that currently applies to main studios. What function does it serve today? To what extent do stations produce local programming at their main studios? If we eliminate the main studio rule, should we maintain the program origination capability requirement, and, if so, how? Would program origination, to the extent it happens today, occur anyway absent any capability requirement as stations seek to continue to meet viewers' and listeners' interests?

6. We propose to retain section 73.1125(e) of our rules, which requires ''[e]ach AM, FM, TV and Class A TV broadcast station [to] maintain a local telephone number in its community of license or a toll-free number.'' We invite comment on this proposal. Would retention of this requirement help ensure that members of the community continue to have access to their local broadcast stations, for example, to share concerns or seek information, if the current main studio requirements are eliminated? Stations currently are required to post their telephone numbers in their online public files. If we eliminate the main studio rule, should we encourage stations to also publicize their phone numbers in additional ways, such as on their Web sites? Should we require the telephone number to be staffed during normal business hours so that community members may seek assistance during that time? Or, should we require the telephone number to be staffed at all times in which the AM, FM, or Class A

[2] As of June 24, 2016, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with five or more full-time employees were required to place new public and political file documents in the online file on a going-forward basis. By December 24, 2016, these entities were required to upload their existing public file documents to the online file, with the exception of existing political file material. As of March 1, 2018, all noncommercial educational (NCE) broadcast radio stations, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with fewer than five full-time employees, and commercial broadcast radio stations in markets below the top 50 or outside all markets must have placed all existing public file material in the online public file, with the exception of existing political file material, and must begin placing all new public and political file material in the online file on a going-forward basis.

[3] The associated requirements include the requirement that the main studio must have full-time management and staff present during normal business hours, and that it must have program origination capability.

[4] Although LPFM stations have no main studio requirement, points are awarded under the service's comparative selection procedures to those applicants that pledge to locally originate at least eight hours of programming per day and to maintain a main studio with local origination capability.

[5] We note that on April 19, 2017, Garvey Schubert Barer's (GSB) Media, Telecom and Technology group filed a petition asking the Commission to initiate a rulemaking to repeal its main studio rule. Because our proposals effectively satisfy GSB's request, we dismiss GSB's rulemaking petition as moot.

[6] 47 U.S.C. 307(b). We do not herein propose any modifications to the existing requirements pertaining to submission of quarterly issues/programs lists and requirements pertaining to a station's coverage of the community served.

TV station is on the air? Alternatively, is a staffed telephone number requirement unnecessary so long as station staff regularly retrieves and responds promptly to voicemail messages from the public left at that telephone number? If community members must leave a voicemail message in order to reach a local broadcast station, will this impede the station's ability to relay time-sensitive emergency information to the public? Should we instead require each station to designate a point of contact to respond to communications from the public? We invite comment on these alternatives and any other approaches we should consider to ensure that members of the public can easily contact station representatives and receive timely responses. Should broadcasters establish processes to ensure their ability to receive time-sensitive or emergency information during non-business hours?

7. To the extent that stations are no longer required to have a local main studio, we seek comment on how we should ensure that community members have access to a station's public file. In this regard, we note that television stations already have fully transitioned their public file materials to the online public file as have some radio stations. We recognize that under current rules, some stations may continue maintaining public inspection files locally, and not online, even after the applicable compliance deadline. In addition, certain existing political materials that are part of the public inspection file may remain in the local public inspection file, rather than the online public inspection file, until the station is no longer required to retain the materials in question. If all or a portion of a station's public inspection file is not available via the online public file, we invite comment on how best to ensure that community members have access to the relevant materials in the absence of a local main studio. For example, should we require the station to provide community members with access to its local public inspection file at another location in the community of license, such as a local library or another station's main studio? [7] Commenters advocating that approach should explain how stations would notify community members of the location of their public inspection file. Alternatively, should we eliminate the main studio rule only for stations that have fully transitioned all public file material to the online public file, including existing political file materials? [8] Would it be reasonable to permit a station to eliminate its local main studio if it has transitioned all of its public file materials to the online public file except for its political file materials for which it has a two-year retention period? We seek comment on the pros and cons of these various approaches.

8. In addition to the proposed revisions to section 73.1125 of the Commission's rules, we propose to eliminate other Commission rules that currently reference section 73.1125. Specifically, if we eliminate the main studio rule, we also will need to delete sections 73.3538(b)(2) (informal application to relocate main studio), 73.1690(c)(8)(ii) (location of FM studio within station principal community contour), and 73.1690(d)(1) (permissive change in studio location) of the Commission's rules, all of which are premised on the existing main studio rule.[9] We invite comment on this proposal. Are any other rule changes needed to conform to the proposed elimination of the main studio rule and associated requirements, including with respect to any rules that reference ''studio'' or ''main studio'' instead of section 73.1125? [10] For example, Class A stations are required to broadcast an average of at least three hours per week of ''locally produced programming'' each quarter. The Commission's rules define ''locally produced programming'' as programming ''(1) Produced within the predicted Grade B contour . . . ; (2) Produced within the predicted DTV noise-limited contour . . . ; or (3) Programming produced at the station's main studio.'' If the main studio rule and associated location restrictions are eliminated, how does that impact the third option? Could a Class A station locate a ''main studio'' at a distance outside its contour and still qualify as having ''locally produced programming''? We seek comment on how to address this issue. Should we eliminate the main studio option from this rule? If so, how should we address Class A stations with main studios currently located outside the applicable contour? Is there some other relevant requirement we can substitute, to the extent necessary to meet our statutory requirements for Class A stations?

9. We also invite comment on any other issues related to our proposals in this proceeding. What impact would elimination of the main studio rule and the associated staffing and program origination requirements have on other Commission proceedings? [11]

10. Finally, we invite comment on any alternate proposals we should consider, rather than completely eliminating the main studio rule and associated requirements. For example, should we only eliminate the rule for a certain subset of stations, such as those that are located in small and mid-sized markets or those that have fewer than a certain number of employees? Commenters advocating this approach should explain with specificity how we should define those stations that will be permitted to eliminate their main studio. We have proposed to eliminate the main studio rule and the associated requirements for all AM, FM, and television broadcast stations. Is there any reason to distinguish between our treatment of AM, FM, and television broadcast stations in this context? We also invite comment on alternative ways we can reduce main studio-related burdens on broadcast stations.

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In

[7] Applicants without a main studio currently have a similar requirement. *See* 47 CFR 73.3526(b)(1) (''. . . An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.'').

[8] For example, because television stations without waivers, and some radio stations, have fully transitioned all public file material to the online public file, they could eliminate their main studio upon the effective date of an order in this docket, if any, eliminating the main studio rule; whereas, radio stations that have not yet complied with the online public file requirements would not be able to take advantage of this potential rule change until they too had fully transitioned, if we only eliminate the main studio requirement for stations that have fully transitioned to an online public file. A station has ''fully transitioned,'' and thus could eliminate the main studio under this approach, only if all existing political file material was either voluntarily transitioned to the online public file, or, in the case of television stations, is older than the two year retention period.

[9] In preparing this NPRM, we determined that section 73.1690(d)(2) of our rules references section 73.1410 of our rules, which has been deleted, and we thus propose to delete that outdated reference.

[10] *See, e.g.,* 47 CFR 73.3526(b)(1), (b)(2)(ii), (c)(2), (e)(4); *Id.* 73.3527(b)(1), (b)(2)(iii), (c)(2), (e)(3); *Id.* 73.3544(b)(3).

[11] For example, in certain cases Commission staff has assessed if one station is exercising de facto control over another by considering, among other things, compliance with the main studio minimum staffing requirements.

summary, the NPRM proposes to eliminate the rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.[12] The NPRM also proposes to eliminate existing requirements associated with our main studio rule, including the requirement that the main studio must have full-time management and staff present during normal business hours, and that it must have program origination capability. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, 307(b), and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 307(b), 336(f). The types of small entities that may be affected by the proposals contained in the NPRM fall within the following categories: Television Broadcasting, Radio Broadcasting. The projected reporting, recordkeeping, and other compliance requirements are: (1) A proposal to eliminate the rule requiring each AM, FM, and television broadcast station to maintain a local main studio; and (2) a proposal to eliminate the associated staffing and program origination capability requirements that apply to main studios. There is no overlap with other regulations or laws. The Commission invites comment on alternative ways it can reduce main studio-related burdens on small entities, including whether a requirement that the local telephone number for a main studio be staffed during normal business hours is unnecessary so long as station staff regularly retrieves and responds promptly to voicemail messages from the public left at that telephone number, or whether the Commission instead should require each station to designate a point of contact to respond to communication from the public; whether instead of eliminating the main studio rule entirely, the Commission could only eliminate the rule for a certain subset of stations, such as those that are located in small and mid-sized markets or those that have fewer than a certain number of employees; and whether to adopt an alternate approach pursuant to which, if the Commission does not eliminate the main studio rule entirely, it could eliminate the rule only for stations that have fully transitioned their public file materials to the online public file.

12. This document does not contain any proposed new information collection requirements. It does, however, contain proposals to delete rules that contain information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements that would be impacted by the proposals contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 through 3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

13. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

14. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, 307(b), and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 307(b), 336(f).

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

■ 2. Revise § 73.1125 to read as follows:

§ 73.1125 Station telephone number.

Each AM, FM, TV and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

■ 3. In § 73.1690, revise paragraphs (c)(8) and (d) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(8) FM commercial stations and FM noncommercial educational stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that all five of the following requirements are met:

(i) Commercial FM stations must continue to provide a 70 dBu principal community contour over the community of license, as required by § 73.315(a). Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least a portion of the community of license. The 60 and 70 dBu contours must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(ii) For commercial FM stations only, there is no change in the authorized station class as defined in § 73.211.

(iii) For commercial FM stations only, the power decrease is not necessary to achieve compliance with the multiple ownership rule, § 73.3555.

(iv) Commercial FM stations, noncommercial educational FM stations

[12] 47 CFR 73.1125(a) through (d).

on Channels 221 through 300, and noncommercial educational FM stations on Channels 200 through 220 which are located in excess of the distances in Table A of § 73.525 with respect to a Channel 6 TV station, may not use this rule to decrease the horizontally polarized ERP below the value of the vertically polarized ERP.

(v) Noncommercial educational FM stations on Channels 201 through 220 which are within the Table A distance separations of § 73.525, or Class D stations on Channel 200, may not use the license modification process to eliminate an authorized horizontally polarized component in favor of vertically polarized-only operation. In addition, noncommercial educational stations operating on Channels 201 through 220, or Class D stations on Channel 200, which employ separate horizontally and vertically polarized antennas mounted at different heights, may not use the license modification process to increase or decrease either the horizontal ERP or vertical ERP without a construction permit.

* * * * *

(d) The following changes may be made without authorization from the FCC, however informal notification of the changes must be made according to the rule sections specified:

(1) Commencement of remote control operation pursuant to § 73.1400.

(2) Modification of an AM directional antenna sampling system. See § 73.68.

* * * * *

■ 4. In § 73.3538, revise paragraph (b) to read as follows:

§ 73.3538 Application to make changes in an existing station.

* * * * *

(b) An informal application filed in accordance with § 73.3511 is to be used to obtain authority to modify or discontinue the obstruction marking or lighting of the antenna supporting structure where that specified on the station authorization either differs from that specified in 47 CFR part 17, or is not appropriate for other reasons.

[FR Doc. 2017–11425 Filed 6–1–17; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 82, No. 105
Friday, June 2, 2017

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

Office of Advocacy and Outreach

Notice of Request for Approval of Information Collection

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Advocacy and Outreach's (OAO) intent to request approval from the Office of Management and Budget (OMB) to conduct data collection for the U.S. Department of Agriculture (USDA) Hispanic-Serving Institutions (HSI) Scholars Program.

DATES: Comments on this notice must be received by August 1, 2017 to be assured of consideration.

ADDRESSES: The Office of Advocacy and Outreach invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This Web site (*http://www.regulations.gov*) provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Follow the on-line instructions at that site for submitting comments. Send mail, including CD–ROMs, etc., to: Jacqueline Padron, U.S. Department of Agriculture, Office of Advocacy and Outreach, 1400 Independence Avenue SW., Whitten Building Room 520–A, Mailstop 0601, Washington, DC 20250.

Hand or courier submittals should be delivered to: Office of Advocacy and Outreach, 1400 Independence Avenue SW., Whitten Building Room 520–A, Mailstop 0601, Washington, DC 20250.

Instructions: All items submitted by mail or electronic mail must include Office of Advocacy and Outreach, U.S. Department of Agriculture. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, please contact the Office of Advocacy and Outreach, 1400 Independence Avenue SW., Whitten Building Room 520–A, Mailstop 0601, Washington, DC 20250, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jacqueline Padron, Program Director, Hispanic-Serving Institutions National Program (HSINP), USDA OAO, 1400 Independence Avenue SW., Room 520–A, Mailstop 0601, Washington, DC 20250, email: *hsinp@osec.usda.gov,* Telephone: (202) 720–6506, Fax: (202) 720–7704.

SUPPLEMENTARY INFORMATION:

Title: USDA/HSI Scholars Program.

OMB Number: 0503–New.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection.

Abstract: The purpose of the USDA/HSI Scholars Program is to strengthen the long-term partnership between USDA and the Hispanic-Serving Institutions; to increase the number of students studying and graduating in food, agriculture, natural resources, and other related fields of study; to develop a pool of scientists and professionals to fill jobs in the food, agricultural, or natural resources system; and to create a talent pipeline for USDA.

The USDA/HSI Scholars Program is a joint human capital initiative between USDA and Hispanic-Serving Institutions. Through the program, the USDA offers scholarships to high school and college students who are seeking a bachelor's degree in the fields of agriculture, food, or natural resource sciences, and related disciplines at Hispanic-Serving Institutions. In order for graduating high school students and current freshmen and sophomores to be considered for the scholarship, a completed application is required. The first section of the high school application requests the applicant to include biographical information (*e.g.,* name, address, etc.); educational background information (*e.g.,* grade point average, name of university(ies) interested in attending, and desired major); and extracurricular activities. The second section of the application is completed by the student's guidance counselor and requests information pertaining to the student's academic status and grade point average. The last section of the application, which is to be completed by a teacher, provides information that assesses the applicant's interests, character, and potential. In addition to the application form, the college submission requires two letters of recommendation—one from a Department Head, Dean or University Vice President, and another from a College Professor. There are no sections included in the application that these individuals will need to complete.

Frequency: Annually.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one to two hours per response.

Respondents: High School students, freshman and sophomore college students, teachers, principals, guidance counselors, and school administrators.

Estimated Number of Respondents: 600 (200 applications).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 700 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jacqueline Padron, Program Director, Hispanic-Serving Institutions National Program, USDA Office of Advocacy and Outreach, 1400 Independence Avenue SW., Room 520–A, Mail Stop 0601, Washington, DC 20250, or via email at: *hsinp@osec.usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB's approval.

All comments will become a matter of public record.

Signed this 23rd day of May 2017.

Christian Obineme,

Associate Director, Office of Advocacy and Outreach.

[FR Doc. 2017–11389 Filed 6–1–17; 8:45 am]

BILLING CODE 3412–89–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Texas Advisory Committee (Committee) to the Commission will be held at 2:00 p.m. (Central Time) Wednesday, June 28, 2017. The purpose of the meeting is for the Committee to receive orientation from Commission staff and share project process.

DATES: The meeting will be held on Wednesday, June 28, 2017, at 2:00 p.m. CDT.

PUBLIC CALL INFORMATION:

Dial: 800–310–7032.

Conference ID: 6093907.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–310–7032, conference ID number: 6093907. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=276.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Committee Meeting Discussion
III. Discussion on FY17 Civil Rights Project Ideas
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: May 26, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–11403 Filed 6–1–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2017]

Foreign-Trade Zone (FTZ) 64—Jacksonville, Florida; Notification of Proposed Production Activity; Hans-Mill Corporation; Subzone 64D; (Household Trash Cans and Plastic Storage Totes); Jacksonville, Florida

Hans-Mill Corporation (Hans-Mill), operator of Subzone 64D, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 64D, in Jacksonville, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 10, 2017.

The facility is used for the production of household trash cans and plastic storage totes. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Hans-Mill from customs duty payments on the foreign-status materials/components used in export production (an estimated five percent of shipments). On its domestic sales, Hans-Mill would be able to choose the duty rates during customs entry procedures that apply to stainless steel/plastic trash cans and plastic storage totes, trash cans and liners (duty rates—2 or 3%) for the foreign-status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include pre-cut/pre-treated stainless steel sheets, plastic lids, plastic bases, pulp packaging material and polypropylene resin material (duty rates range from free to 6.5%). The request indicates that stainless steel sheets are subject to an antidumping/countervailing duty (AD/CVD) order. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2017.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 26, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–11416 Filed 6–1–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2017]

Foreign-Trade Zone (FTZ) 114—Peoria, Illinois; Notification of Proposed Production Activity; Bell Sports, Inc.; Subzone 114F; (Sports Equipment); Rantoul, Illinois

Bell Sports, Inc. (Bell Sports) submitted a notification of proposed production activity to the FTZ Board for its facility in Rantoul, Illinois, within Subzone 114F. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 15, 2017.

Bell Sports already has authority to produce certain sports equipment within Subzone 114F. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Bell Sports from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, Bell Sports would be able to choose the duty rates during customs entry procedures that apply to bicycle, motorcycle, football and baseball helmets; bicycle baby seats; bicycle car carrier racks; and, collectible football helmets (duty rates range from free to 10%) for the foreign-status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include polypropylene webbing for bike helmets, stainless steel pins, aluminum screws, LED lights for bike helmets, and knee and elbow pad sets (duty rates range from 2.5% to 6.2%). The request indicates that the polypropylene webbing for bike helmets (classified under HTSUS 5806.32) will be admitted to the subzone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff savings on this item.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2017.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 26, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–11417 Filed 6–1–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Change in Comment Deadline for Section 232 National Security Investigation of Imports of Aluminum

AGENCY: Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce.

ACTION: Notice on change in comment period for previously published notice of request for public comments and public hearing.

SUMMARY: On May 9, 2017, the Bureau of Industry and Security (BIS), published the Notice of Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Aluminum. The May 9 notice specified that the Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of aluminum. This investigation has been initiated under section 232 of the Trade Expansion Act of 1962, as amended. (*See* the May 9 notice for additional details on the investigation and the request for public comments.) The May 9 notice also announced that the Department of Commerce will hold a public hearing on the investigation on June 22, 2017 in Washington, DC (*See* the May 9 notice for additional details on the public hearing.) The deadline for the written comments was June 29, 2017. Today's notice moves the deadline for all written submissions up by six calendar days. Commenters now are encouraged to submit their comments by June 20, 2017, but all written submissions must be received by no later than June 23, 2017 to be considered in the drafting of the final report.

DATES: Comments are encouraged to be submitted by June 20, but comments must be received no later than June 23, 2017.

ADDRESSES: Send written comments to Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 1093, Washington, DC 20230 or by email to *Aluminum232@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce (202) 482–4060, *brad.botwin@bis.doc.gov.* For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.bis.doc.gov/232.*

Submit public comments to *Aluminum232@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2017 (82 FR 21509), the Bureau of Industry and Security (BIS) published the *Notice of Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Aluminum.* The May 9 notice specified that on April 26, 2017, the Secretary of Commerce (''Secretary'') initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of aluminum. (*See* the May 9 notice for additional details on the investigation and the request for public comments.)

The May 9 notice also announced that the Department of Commerce will hold a public hearing on the investigation on June 22, 2017 in Washington, DC. (*See* the May 9 notice for additional details on the public hearing.)

Change in Comment Period Deadline

The May 9 notice included a comment period deadline of June 29, 2017 and required that written statements related to the public hearing also be submitted by June 29, 2017. The Department of Commerce has determined at this time that it is warranted to shorten the written submission period by six calendar days. Today's notice specifies that commenters are encouraged to submit their comments by June 20, 2017, but all written submissions must now be received by no later than June 23, 2017 to be considered in the drafting of the final report. Submit public comments to *Aluminum232@bis.doc.gov.*

Receiving comments by June 20, 2017 will assist the Commerce Department in

preparing for the public hearing on the investigation scheduled for June 22, 2017. Moving the deadline for all written submissions to June 23, 2017 will enable the Commerce Department to more expeditiously finalize the report, taking account of the time-sensitive nature of the national security implications related to this section 232 investigation of aluminum, and of the President's direction to move quickly on this important matter. The Commerce Department has included one additional day after the hearing concludes to allow people who attend or view remotely the hearing to submit any additional comments they may have in response to testimony during the hearing.

Dated: May 31, 2017.

Wilbur Ross,

Secretary of Commerce.

[FR Doc. 2017–11557 Filed 5–31–17; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–869]

Certain New Pneumatic Off-the-Road Tires From India: Notice of Correction to Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2017, the Department of Commerce (Department) published the *Antidumping Duty Order* on certain new pneumatic off-the-road tires from India.[1] In the *Antidumping Duty Order,* the Department inadvertently omitted a statement to explain that Balkrishna Industries Limited (BKT) is partially excluded from the *Antidumping Duty Order.*

Correction

Because the Department calculated a weighted-average antidumping duty margin of zero percent for BKT in the *Final Determination,*[2] which was unchanged in the *Amended Final Determination,*[3] BKT is partially excluded from the *Antidumping Duty Order.* Therefore, we are correcting the *Antidumping Duty Order* to specify that merchandise produced and exported by BKT is excluded from the Order. This exclusion does not apply to merchandise produced by BKT and exported by any other company or merchandise produced by any other company and exported by BKT. Resellers of merchandise produced by BKT, are also not entitled to this exclusion. The sections explaining the suspension of liquidation and listing the weighted-average antidumping duty margins and cash deposit rates should have appeared as follows:

Antidumping Duty Order

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) notified the Department of its final determination that the industry in the United States producing off road tires is materially injured by reason of the less-than-fair value imports of off road tires from India.[4] Therefore, in accordance with section 735(c)(2) of the Act, we are publishing this antidumping duty order.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of off-road tires from India, which specifically excludes merchandise exported and produced by BKT. Antidumping duties will be assessed on unliquidated entries of off road tires from India entered, or withdrawn from warehouse, for consumption on or after February 2, 2017, the date of publication of the *Amended Final Determination*.[5]

Continuation of Suspension of Liquidation, in Part

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation on all relevant entries of off road tires from India. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins listed below.[6] The all-others rate applies to all producers or exporters not specifically listed. For the purposes of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from India have been adjusted for export subsidies found in the amended final determination of the companion countervailing duty investigation of this merchandise (*i.e.,* 4.72 percent).[7]

Because the estimated weighted-average dumping margin for BKT's producer and exporter combination is zero, the Department is directing U.S. Customs and Border Protection not to suspend liquidation of entries of subject merchandise where BKT acted as both the producer and exporter. Entries of subject merchandise exported to the United States by any other producer and exporter combination are not entitled to this exclusion from suspension of liquidation and are subject to the cash deposit rate for the all-others entity.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average antidumping duty margin percentages are as follows:

[1] *See Certain New Pneumatic Off-the-Road Tires from India: Antidumping Duty Order,* 82 FR 12553 (March 6, 2017) (Antidumping Duty Order).

[2] *See Certain New Pneumatic Off-the-Road Tires From India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances,* 82 FR 4848, 4849 (January 17, 2017) (''Final Determination'').

[3] *See Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Amended Final Affirmative Countervailing Duty Determination for India and Countervailing Duty Orders,* 82 FR 9056, 9058 (February 2, 2017) (*Amended Final Determination*).

[4] *See* Letter to Ronald Lorentzen, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from Rhonda K. Schmidtlein, Chairman of the U.S. International Trade Commission, regarding off the road tires from the India and Sri Lanka (February 23, 2017). *See also Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka,* Investigation Nos. 701–TA–552–553 and 731–TA–1308 (Final), USITC Publication 4669 (February 2017).

[5] *See Amended Final Determination,* 82 FR at 9056.

[6] *See* Section 736(a)(3) of the Act.

[7] *See Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Amended Final Affirmative Countervailing Duty Determination for India and Countervailing Duty Orders,* 82 FR 12556 (March 6, 2017).

Exporter/producer	Weighted-average dumping margin (percent)	Cash deposit rate adjusted for subsidy offset (percent)
ATC Tires Private Ltd	3.67	0.00
All-Others	3.67	0.00

This correction to the *Antidumping Duty Order* is issued and published in accordance with section 736(a) of the Act.

Dated: May 26, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–11424 Filed 6–1–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Effective June 2, 2017.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Department contact
A–351–809	731–TA–532	Brazil	Circular Welded Non-Alloy Steel Pipe (4th Review).	Jacqueline Arrowsmith (202) 482–5255.
A–533–502	731–TA–271	India	Welded Carbon Steel Pipe and Tube (4th Review).	Robert James (202) 482–0649.
A–475–828	731–TA–865	Italy	Stainless Steel Butt-Weld Pipe Fittings (4th Review).	Jacqueline Arrowsmith (202) 482–5255.
A–557–809	731–TA–866	Malaysia	Stainless Steel Butt-Weld Pipe Fittings (3rd Review).	Jacqueline Arrowsmith (202) 482–5255.
A–201–805	731–TA–534	Mexico	Circular Welded Non-Alloy Steel Pipe (4th Review).	Jacqueline Arrowsmith (202) 482–5255.
A–565–801	731–TA–867	Philippines	Stainless Steel Butt-Weld Pipe Fittings (3rd Review).	Jacqueline Arrowsmith (202) 482–5255.
A–580–809	731–TA–533	Republic of Korea	Circular Welded Non-Alloy Steel Pipe (4th Review).	Jacqueline Arrowsmith (202) 482–5255.
A–583–008	731–TA–132	Taiwan	Certain Circular Welded Carbon Steel Pipes and Tubes (4th Review).	Jacqueline Arrowsmith (202) 482–5255.
A–549–502	731–TA–252	Thailand	Certain Circular Welded Carbon Steel Pipes and Tubes (4th Review).	Jacqueline Arrowsmith (202) 482–5255.
A–489–501	731–TA–273	Turkey	Certain Circular Welded Carbon Steel Pipes and Tubes (4th Review).	Robert James (202) 482–0649.
C–489–502	701–TA–253	Turkey	Certain Circular Welded Carbon Steel Pipes and Tubes (4th Review).	Robert James (202) 482–0649.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System

(ACCESS), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 26, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–11419 Filed 6–1–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*) (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF447

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of SEDAR 50 Assessment Webinars 3 and 4.

SUMMARY: The SEDAR 50 assessment of the Atlantic stock of *Blueline Tilefish* will consist of a series of workshops and webinars: Stock ID Work Group Meeting; Data Workshop; Assessment Workshop and Webinars; and a Review Workshop.

DATES: The SEDAR 50 Assessment Webinars 3 and 4 will be held on Monday, June 19, 2017 and Monday, July 10, 2017, from 9 a.m. to 1 p.m. The Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR)

process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing a workshop and/or webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment webinars are as follows:

Participants will discuss any remaining modeling issues from the Assessment Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 30, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–11430 Filed 6–1–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF446

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's Ad Hoc Ecosystem Workgroup will hold a webinar, which is open to the public.

DATES: The webinar will be held on Monday, June 19, 2017, from 2 p.m. to 4:30 p.m., or when business for the day is completed.

ADDRESSES: To join the webinar visit this link: *http://www.gotomeeting.com/online/webinar/join-webinar.* Enter the Webinar ID: 473–224–379. Enter your name and email address (required). You must use your telephone for the audio portion of the meeting by dialing this TOLL number +1 (631) 992–3221. Enter the Attendee phone audio access code 887–175–225. Enter your audio phone pin (shown after joining the webinar). *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting WebinarApps). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2411 for technical assistance. A public listening station will also be provided at the Pacific Council office.

Council office address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council Staff Officer; phone: (503) 820–2422; email: *kit.dahl@noaa.gov.*

SUPPLEMENTARY INFORMATION: In March 2017, the Pacific Council requested the EWG to discuss the two ecosystem initiatives identified in Appendix A to the Council's Fishery Ecosystem Plan: A combined initiative on the socio-economic effects of fisheries management practices on fishing communities (A.2.7) and on human recruitment to the fisheries (A.2.6), and an initiative on the effects of near-term climate shift and long-term climate change on our fish, fisheries, and fishing communities (A.2.8). The EWG intends to discuss the specific objectives of the initiatives, inventory available information, and propose a timeline for completing either or both initiatives. The Council directed the EWG to report back at the September 2017 Pacific Council meeting. The purpose of this webinar is for the EWG to discuss the tasks outlined above and begin planning their report for the September 2017 Pacific Council meeting.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: May 30, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–11429 Filed 6–1–17; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

Comments must be received on or before: July 2, 2017.

ADDRESSES: Committee for Purchase from People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN(s)—Product Name(s): MR 13008—Melon Baller.
Mandatory Source(s) of Supply: Cincinnati Association for the Blind, Cincinnati, OH.
Mandatory for: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, 41 CFR 51–6.4.
Contracting Activity: Defense Commissary Agency.
Distribution: C-List

Services

Service Type: Custodial Service.
Mandatory for: National Park Service, Golden Gate National Recreation Area, Fort Mason, Buildings 101, 201 and 204, San Francisco, CA.
Mandatory Source(s) of Supply: Toolworks, Inc., San Francisco, CA.
Contracting Activity: Department of the Interior, National Park Service.
Service Type: Individual Equipment Elements (IEE) Store Service.
Mandatory for: US Air Force, Elmendorf AFB, 10480 Sijan Avenue, Joint Base Elmendorf-Richardson, AK.
Mandatory Source(s) of Supply: RLCB, Inc., Raleigh, NC.
Contracting Activity: Dept of the Air Force, FA5000 673 CONS LGC
Service Type: Dispenser Machine Support Service
Mandatory for: US Navy, Naval Medical Center San Diego, 34800 Bob Wilson Drive, San Diego, CA
Mandatory Source(s) of Supply: Job Options, Inc., San Diego, CA
Contracting Activity: Dept of the Navy, Naval Medical Center

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
FS1349B—Windbreaker, SCSEP, Forest Service, Dark/Green/Pantone, Various Sizes
FS509A—Vest, Forest Service, SCSEP, Various Sizes
FS240—Jeans, Field, Forest Service, Men's, Various Sizes
FS400—Pants, Field, Forest Service, Men's, Dark Green/Pantone, Wool, Various Sizes
FS326—Cap, Baseball, Forest Service, Dark Green/Pantone, Nylon Mesh, Various Sizes
FS521—Cap, SCSEP, Forest Service, Dark Green/Pantone, Nylon Mesh, Various Sizes
FS9552—Patches, Volunteer, Forest Service, Pkg. of 10
FS875—Nameplate, Forest Service, Law Enforcement, Gold Plated
8455–00–NSH–0012—Patches, Volunteer, Forest Service, Pkg. of 10
8455–00–NSH–0022—Nameplate, Forest Service, Law Enforcement, Gold Plated
8455–00–NSH–0023—Patch, Forest Service, Law Enforcement, Large
8455–00–NSH–0024—Patch, Forest Service, Law Enforcement, Small
Mandatory Source(s) of Supply: Human Technologies Corporation, Utica, NY
Contracting Activity: Department Of Agriculture, Washington Office

Services

Service Type: Grounds Maintenance Service
Mandatory for:
Eglin Air Force Base: Duke Field, Eglin, FL
Eglin Air Force Base: East of Memorial Trail (excluding the airfield), Eglin, FL
Eglin Air Force Base: Navy EOD, Eglin, FL
Eglin Air Force Base: Ranger Camp, Eglin, FL
Eglin Air Force Base: Site C–6, Eglin, FL
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA2823 AFTC PZIO

Amy B. Jensen,

Director, Business Operations.

[FR Doc. 2017–11468 Filed 6–1–17; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective:* July 2, 2017.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On April 28, 2017 (82 FR 19662–19663), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in

connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
7530-01-368-3491—Index Dividers, White Tabs with Black Print, January–December
Mandatory Source(s) of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activities:
General Services Administration, New York, NY
Department of Veterans Affairs, Strategic Acquisition Center
NSN(s)—Product Name(s):
7930–00–NIB–0210 Cleaner, Phenolic Disinfectant, Concentrate, 2 Liter
7930–01–381–5957 Cleaner, Pretreatment Carpet, Concentrate, 2 Liter
7930–01–412–1031 Cleaner, Scotchgard Bonnet, Concentrate, 2 Liter
Mandatory Source(s) of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activity: Department of Veterans Affairs, Strategic Acquisition Center
NSN(s)—Product Name(s): 7350–01–359–9524—Cup, Paper, Recyclable, White, 9 oz.
Mandatory Source(s) of Supply: Clovernook Center for the Blind and Visually Impaired, Cincinnati, OH
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s):
7520–01–624–9379—Pen, Roller Ball, Liquid Ink, Retractable, Needle Point, Airplane Safe, 0.5mm, Refillable, Black, EA
7520–01–624–9383—Pen, Roller Ball, Liquid Ink, Retractable, Needle Point, Airplane Safe, 0.5mm, Refillable, Blue, EA
7520–01–624–9384—Pen, Roller Ball, Liquid Ink, Retractable, Needle Point, Airplane Safe, 0.7mm, Refillable, Black, EA
7520–01–624–9385—Pen, Roller Ball, Liquid Ink, Retractable, Needle Point, Airplane Safe, 0.7mm, Refillable, Blue, EA
Mandatory Source(s) of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 7520–01–466–0485—Tray, Desk, Plastic
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s):
891500–NSH–0145—Diced Green Peppers Diced Green Peppers
891500–NSH–0146—Sliced Yellow Onions Sliced Yellow Onions
891500–NSH–0147—Cole Slaw with Carrots
Mandatory Source(s) of Supply: Employment Solutions, Inc., Lexington, KY
Contracting Activity: Department of Justice, Federal Prison System
NSN(s)—Product Name(s): MR 942—Cloth, Dish, 2 pack
Mandatory Source(s) of Supply: Lions Services, Inc., Charlotte, NC
Contracting Activity: Defense Commissary Agency
NSN(s)—Product Name(s): 1430–01–133–8435—Bag, Storage
Mandatory Source(s) of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: Defense Logistics Agency Land and Maritime

Amy B. Jensen,

Director, Business Operations.

[FR Doc. 2017–11469 Filed 6–1–17; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0075]

Agency Information Collection Activities; Comment Request; U.S. Department of Education Supplemental Information for the SF–424 Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 1, 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–2017–ICCD–0075. 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 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Alfreida Pettiford, 202–245–6110.

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: U.S. Department of Education Supplemental Information for the SF–424 Form.

OMB Control Number: 1894–0007.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 8,078.

Total Estimated Number of Annual Burden Hours: 2,666.

Abstract: The U.S. Department of Education Supplemental Information form for the SF–424 is used together with the SF–424, Application for Federal Assistance. Several years ago ED made a decision to switch from its previously cleared form, the Application for Federal Education Assistance or ED 424 (1890–0017) collection (now 1894–0007). ED made a policy decision to switch to the SF–424 in keeping with Federal-wide forms standardization and streamlining efforts, especially with widespread agency use of *Grants.gov*.

There were several data elements/questions on the ED 424 that were required for ED applicants that were not included on the SF–424. Therefore, ED put these questions that were already cleared as part of the 1890–0017

collection (now 1894–0007) on a form entitled the, U.S. Department of Education Supplemental Information for the SF–424.

The questions on this form deal with the following areas: Project Director identifying and contact information; Novice Applicants; and Human Subjects Research. The ED supplemental information form could be used with any of the SF–424 forms in the SF–424 forms family, as applicable.

Dated: May 30, 2017.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–11406 Filed 6–1–17; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–9961–06]

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:* John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8173; email address: *schaeffer.john@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 substance and/or mixture is provided in Unit IV.: 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.

Octamethylcyclotetrasiloxane (D4) (CASRN 556–67–2).

1. *Chemical Use:* 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. *Information Received:* The following listing describes the nature of the information received. The information will be added to the docket for the applicable TSCA section 4 rule, order, or consent agreement and can be found by referencing the docket ID number provided. EPA reviews of information will be added to the same docket upon completion.

4. D4 Environmental Testing ECA—Interim Progress Report #6. The docket ID number assigned to this information is EPA–HQ–OPPT–2012–0209.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: April 10, 2017.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2017–11460 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9033–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)
Filed 05/22/2017 Through 05/26/2017
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20170091, Draft, USAF, OH, Wright-Patterson Air Force Base Housing Program, Comment Period Ends: 07/17/2017, Contact: Mike Ackerman 210–925–2741

EIS No. 20170092, Draft, USACE, USFWS, CA, South Sacramento Habitat Conservation Plan, Comment Period Ends: 09/05/2017, Contact: John Robles 916–414–6731 (USFWS), Michael Jewell 916–557–6605 (USACE)

The U.S. Department of the Interior's Fish and Wildlife Service and U.S.

Army Corps of Engineers are joint lead agencies on this project.

EIS No. 20170093, Draft Supplement, FTA, CA, Westside Purple Line Extension, Comment Period Ends: 07/17/2017, Contact: Ray Tellis 213–202–3950

Amended Notices

EIS No. 20170031, Draft, USFS, ID, Big Creek Hot Springs Geothermal Leasing, Comment Period Ends: 07/03/2017, Contact: Julie Hopkins 208–756–5279.

Revision to FR Notice Published 03/17/2017; Reopening the Comment Period to End 07/03/2017.

Dated: May 30, 2017.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–11464 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Notice of Regular Meeting

AGENCY: Farm Credit System Insurance Corporation Board.

ACTION: Notice of regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 8, 2017, from 2:00 p.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Closed Session

- FCSIC Report on System Performance and Liquidity

Open Session

A. Approval of Minutes

- March 9, 2017

B. Business Reports

- FCSIC Financial Reports
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Policy Statement on Strategic Planning
- Mid-Year Review of Insurance Premium Rates

Dated: May 30, 2017.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2017–11408 Filed 6–1–17; 8:45 am]

BILLING CODE 6710–01–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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 1, 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–xxxx.

Title: FCC Form 2100, Application for Media Bureau Video Service Authorization, Schedule 387 (Transition Progress Report).

Form Number: FCC Form 2100, Schedule 387 (Transition Progress Report Form).

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 1,000 respondents; 3,333 responses.

Estimated Time per Response: 2 hours (1 hour to complete the form, 1 hour to respond to technical questions).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,666 hours.

Total Annual Costs: $260,241.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Public Law 112–96, § 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: By Public Notice released January 10, 2017, The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations, MB Docket No. 16–306, Public Notice, 32 FCC Rcd 256 (IATF/Med. Bur. 2017). The Incentive Auction Task Force and Media Bureau described the information that must be provided in the adopted FCC Form 2100, Schedule 387 (Transition Progress Report Form) to be filed by Reimbursable Stations and when and how the Transition Progress Reports must be filed. We also proposed to require broadcast television stations that are not eligible to receive reimbursement of associated expenses from the Reimbursement Fund (Non-Reimbursable Stations), but must transition to new channels as part of the Commission's channel reassignment plan, to file progress reports in the same manner and on the same schedule as Reimbursable Stations, and sought comment on that proposal. By Public Notice released May 18, 2017. The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements for the Transition Progress Report Form by Stations That Are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund, MB Docket No. 16–306, Public Notice, DA 17–484 (rel. May 18, 2017) (referred to collectively with Public Notice cited above as Transition Progress Report Public Notices). We concluded that Non-Reimbursable Stations will be required to file Transition Progress Reports following the filing procedures adopted for Reimbursable Stations.

The Commission is seeking from the Office of Management and Budget (OMB) approval for FCC Form 2100, Schedule 387 (Transition Progress Report).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–11336 Filed 6–1–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2017.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Bank Forward Employee Stock Ownership Plan and Trust,* Fargo, North Dakota; to acquire up to 30 percent of Security State Bank Holding Company, Fargo, North Dakota, and thereby indirectly acquire shares of Bank Forward, Hannaford, North Dakota.

Board of Governors of the Federal Reserve System, May 30, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–11437 Filed 6–1–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 2017.

A. *Federal Reserve Bank of Minneapolis* (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Waseca Bancshares, Inc.,* Waseca, Minnesota; to merge with Freedom Bancorporation, Inc., and thereby indirectly acquire Lake Area Bank, both of Lindstrom, Minnesota.

Board of Governors of the Federal Reserve System, May 26, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–11398 Filed 6–1–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2017.

A. *Federal Reserve Bank of Richmond* (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Pamela Fowler, Bonita Springs, Florida,* individually and together as a group acting in concert with Dawneda F. Williams, Wise, Virginia; to retain voting shares of Miners and Merchants Bancorp and indirectly, retain shares of Trupoint Bank, both of Grundy, Virginia.

Board of Governors of the Federal Reserve System, May 26, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–11399 Filed 6–1–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10380]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 1, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10380 Reporting Requirements for Grants to States for Rate Review Cycle IV and Effective Rate Review Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reporting Requirements for Grants to States for Rate Review Cycle IV and Effective Rate Review Program; *Use:* Section 2794(c) directs the Secretary to carry out a program to award grants to states, which are to serve the following purposes: (1) Establish or enhance rate review programs, referred to as ''Rate Review'' activities; (2) Help states to provide data to the Secretary regarding trends in rate increases as well as recommendations regarding plan participation in the Exchange, referred to as ''Required Rate Reporting'' activities; (3) Establish or enhance Data Centers that collect, analyze, and disseminate health care pricing data to the public, referred to as ''Data Center'' activities.

CMS has released Premium Review Grants in four funding opportunity cycles. Grant recipients must states submit the following to the Secretary for each grant cycle, as applicable: Quarterly reports—30 days after the quarter has ended for the entire duration of the grant; Annual report—This report does not contain data, but instead

documents the progress toward establishing or enhancing an Effective Rate Review Program and/or a Data Center; Final report—This report is due at the end of the grant period.

The final rule ''Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review'' (78 FR 13406, February 27, 2013) modified criteria and factors for states to have an Effective Rate Review Program. These changes were necessary to reflect market reform provisions and to fulfill the statutory requirement that the Secretary, in conjunction with the states, monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

CMS is authorized under 45 CFR 154.301(d) to evaluate whether, and to what extent, a state's circumstances have changed such that it has begun to or has ceased to satisfy the Effective Rate Review Program criteria. States respond to a questionnaire annually via the Health Insurance Oversight System (HIOS), a web-based data collection system commonly used on a regular basis. All submissions are made electronically and no paper submissions are required. CMS is not requesting any changes to the questionnaire at this time. *Form Number:* CMS–10380 (OMB Control Number: 0938–1121); *Frequency:* Quarterly and Yearly; *Affected Public:* State agencies; *Number of Respondents:* 51; *Total Annual Responses:* 571; *Total Annual Hours:* 15,415. (For policy questions regarding this collection contact Lisa Cuozzo at 410–786–1746.)

Dated: May 30, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–11431 Filed 6–1–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–1572 and CMS–10633]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 3, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously collection; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report; *Use:* In order to participate in the Medicare Program as a Home Health Agency (HHA) provider, the HHA must meet federal standards. This form is used to record information and patients' health and provider compliance with requirements and to report the information to the federal government. *Form Number:* CMS–1572 (OMB Control Number: 0938–0355); *Frequency:* Yearly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 3,830; *Total Annual Responses:* 3,830; *Total Annual Hours:* 849. (For policy questions regarding this collection contact Sarah Fahrendorf at 410–786–3112.)

2. *Type of Information Collection Request:* New Collection (Request for a new OMB control number); *Title of Information Collection:* QIC Demonstration Evaluation Contractor (QDEC): Analyze Medicare Appeals to Conduct Formal Discussions and Reopenings with Suppliers; *Use:* The Formal Telephone Discussions Demonstration is designed to improve the efficiency of Medicare's five-level appeals system for fee-for-service (FFS) claims, which currently is experiencing a backlog. In the Demonstration, the Qualified Independent Contractor (QIC) provides education through a formal telephone discussion process to improve suppliers' understanding of the reasons for claim denials, and ultimately improve the quality of future claims submissions. CMS is interested in determining whether engagement between suppliers and the QIC will improve the understanding of the cause of Level 2 appeal denials, and over time, whether this results in increased submission of accurate and complete claims at the Medicare Administrative Contractor (MAC) level. The evaluation of the Demonstration will use both

quantitative and qualitative techniques to analyze the outcomes and impact of the Demonstration. Claims analysis, a web-based supplier survey, and supplier key informant interviews will inform the evaluation, and: (1) Focus specifically on outcomes including supplier satisfaction with the discussions, the rate of claims denials, and the number of claims that go through appeals Levels 2 and 3; (2) seek to determine whether further engagement between suppliers and the QIC improves understanding of the reasons for claim denials; and (3) support CMS in assessing the QIC's effectiveness in meeting a number of criteria established by CMS, including how satisfied participating suppliers were with the formal telephone discussion process. *Form Number:* CMS–10633 (OMB control number: 0938–NEW); *Frequency:* Monthly; *Affected Public:* Private Sector Business or other for-profits, Not-for-Profit Institutions; *Number of Respondents:* 10,560; *Total Annual Responses:* 2,640; *Total Annual Hours:* 473.3. (For policy questions regarding this collection contact Lynnsie Doty at 410–786–2175.)

Dated: May 30, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–11428 Filed 6–1–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: Chimpanzee Research Use Form (Office of the Director)

AGENCY: National Institutes of Health, HHS.

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 Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH), will publish periodic summaries of proposed 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: The Division of Program Coordination, Planning, and Strategic Initiatives, OD, NIH, Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892; or call non-toll-free number 301–402–9852; or email your request, including your address, to *dpcpsi@od.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: Chimpanzee Research Use Form, 0925–0705, Extension Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this form is to obtain information needed by the NIH to assess whether the proposed research satisfies the agency's policy for permitting only noninvasive research involving chimpanzees. The NIH will consider the information submitted through this form prior to the agency making funding decisions or otherwise allowing the research to begin. Completion of this form is a mandatory step toward receiving NIH support or approval for non-invasive research involving chimpanzees. The NIH does not fund any research involving chimpanzees proposed in new or other competing projects (renewals or revisions) unless the research is consistent with the definition of ''noninvasive research,'' as described in the ''Standards of Care for Chimpanzees Held in the Federally Supported Chimpanzee Sanctuary System'' (42 CFR part 9). See NOT–OD–16–095 at *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-16-095.html* and 81 FR 6873.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours is 10.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Research Community	20	1	30/60	10
Total	20	1		10

Dated: May 23, 2017.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2017–11393 Filed 6–1–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169)—Extension

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act at 42 U.S.C. 10801 *et seq.,* authorized funds to the same protection and advocacy (P&A) systems created under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, known as the DD Act (as amended in 2000, 42 U.S.C. 15001 *et seq.*]. The DD Act supports the Protection and Advocacy for Developmental Disabilities (PADD) Program administered by the Administration on Intellectual and Developmental Disabilities (AIDD) within the Administration on Community Living. AIDD is the lead federal P&A agency. The PAIMI Program supports the same governor-designated P&A systems established under the DD Act by providing legal-based individual and systemic advocacy services to individuals with significant (severe) mental illness (adults) and significant (severe) emotional impairment (children/youth) who are at risk for abuse, neglect and other rights violations while residing in a care or treatment facility.

In 2000, the PAIMI Act amendments created a 57th P&A system—the American Indian Consortium (the Navajo and Hopi Tribes in the Four Corners region of the Southwest). The Act, at 42 U.S.C. 10804(d), states that a P&A system may use its allotment to provide representation to individuals with mental illness, as defined by section 42 U.S.C. 10802 (4)(B)(iii) residing in the community, including their own home, *only,* if the total allotment under this title for any fiscal year is $30 million or more, *and* in such cases an eligible P&A system *must* give priority to representing PAIMI-eligible individuals, as defined by 42 U.S.C. 10802(4)(A) and (B)(i).

The Children's Health Act of 2000 (CHA) also referenced the state P&A system authority to obtain information on incidents of seclusion, restraint and related deaths [see, CHA, Part H at 42 U.S.C. 290ii–1]. PAIMI Program formula grants awarded by SAMHSA go directly to each of the 57 governor-designated P&A systems. These systems are located in each of the 50 states, the District of Columbia, the American Indian Consortium, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

The PAIMI Act at 42 U.S.C. 10805(7) requires that each P&A system prepare and transmit to the Secretary HHS and to the head of its State mental health agency a report on January 1. This report describes the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council (the PAIMI Advisory Council or PAC) that describes the activities of the council and its independent assessment of the operations of the system.

The Substance Abuse Mental Health Services Administration (SAMHSA) proposes no revisions to its annual PAIMI Program Performance Report (PPR), including the advisory council section, at this time for the following reasons: (1) The revisions revise the SAMHSA PPR, as appropriate, for consistency with the annual reporting requirements under the PAIMI Act and Rules [42 CFR part 51]; (2) The revisions simplify the electronic data entry by state PAIMI programs; (3) GPRA requirements for the PAIMI Program will be revised as appropriate to ensure that SAMHSA obtains information that closely measures actual outcomes of programs that it funds and (4) SAMHSA will reduce wherever feasible the current reporting burden by removing any information that does not facilitate evaluation of the programmatic and fiscal effectiveness of a state P&A system (5) The new electronic version will expedite SAMHSA's ability to prepare the biennial report; (6) The new electronic version will improve SAMHSA's ability to generate reports, analyze trends and more expeditiously provide feedback to PAIMI programs. The current report formats will be effective for the FY 2017 PPR reports due on January 1, 2018

The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Program Performance Report	57	1	20	1,140
Advisory Council Report	57	1	10	570
Total	57			1,710

Written comments and recommendations concerning the proposed information collection should be sent by July 3, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2017–11421 Filed 6–1–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5997–N–25]

30-Day Notice of Proposed Information Collection: Small Area Fair Market Rent Demonstration Evaluation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 3, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 21, 2016 at 81 FR 64929.

A. Overview of Information Collection

Title of Information Collection: Small Area Fair Market Rent Demonstration Evaluation.

OMB Approval Number: Pending.

Type of Request: 2528—New.

Form Number: No forms.

Description of the need for the information and proposed use: HUD generally publishes a single FMR for each metropolitan area and provides public housing agencies with discretion to vary local voucher payment standards between 90 and 110 percent of the Fair Market Rent (FMR) (unless HUD approves an exception). The SAFMR demonstration is testing the alternative approach of setting FMRs at the ZIP Code level. The core hypothesis is that this will significantly expand the ability of Housing Choice Vouchers (HCV) holders to access housing in neighborhoods with high-quality schools, low crime rates, and other indicators of opportunity, as well as integrated neighborhoods in furtherance of HUD's goal of affirmatively furthering fair housing.

HUD is evaluating the SAFMR demonstration and an important consideration in this evaluation is how voucher holders and landlords perceive the shift from traditional area-wide FMRs to SAFMRs. HUD will look into whether both existing and new voucher holders understood how the change to using SAFMRs affected their housing options and whether it led movers to search in new neighborhoods or affected the rate of moving of existing voucher holders. Similarly, HUD wants to know whether landlords were aware of the change in the HCV program and whether this affected their willingness to rent to voucher holders and the level at which they set rents. In order to address these perceptions, 70 tenants and 35 landlords will be interviewed in the areas served by the five PHAs that are in the SAFMR demonstration: Housing Authority of Cook County (IL); Housing Authority of the City of Long Beach (CA); Chattanooga (TN) Housing Authority; Town of Mamaroneck (NY) Housing Authority; Housing Authority of the City of Laredo (TX); and two PHAs from the Dallas metropolitan area—Dallas Housing Authority (TX), and the Plano Housing Authority (TX). To build rapport during recruitment, by acknowledging the value of their time, an incentive payment of $20 for tenants and $40 for landlords will be made.

Exhibit A-2: Number of Respondents, Estimated Burden, and Estimated Cost of Respondent Burden for the Evaluation of the Small Area FMR Demonstration

Affected Public	Data Collection Activity	Respondent Pool	Responsive					Non-Response					Grand Total Annual Burden Estimate (hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
			Estimated Number of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Total Annual Burden Estimate (hours)	Estimated Number of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Total Annual Burden Estimate (hours)			
HCV Holders															
Individual	Telephone Call (Recruiting Call Script)	700	70	1	70	0.08	5.60	630	1	630	0.08	50.40	56.00	$7.25	$406.00
Individual	Recruitment Confirmation Email/Letter	70	70	1	70	0.20	14.00	0	0	0	0.00	0.00	14.00	$7.25	$101.50
Individual	In-person Interview	70	70	1	70	0.75	52.50	0	0	0	0.00	0.00	52.50	$7.25	$380.63
Subtotal Tenants							72.10					50.40	122.50		888.13
Landlords															
Individual	Telephone Call (Recruiting Call Script)	175	35	1	35	0.08	2.80	140	1	140	0.08	11.20	14.00	$32.81	$459.34
Individual	Recruitment Confirmation Email/Letter	35	35	1	35	0.20	7.00	0	0	0	0.00	0.00	7.00	$32.81	$229.67
Individual	In-person Interview	35	35	1	35	0.75	26.25	0	0	0	0.00	0.00	26.25	$32.81	$861.26
Subtotal Landlords							36.05					11.20	47.25		$1,550.27
Grand Total							108.15					61.60	169.75		$2,438.40

The average hourly wage rate for HCV Holders ($7.25) is based on the current Federal minimum wage. The average hourly rate for Landlords ($32.81) is based on the average hourly rates for Property, Real Estate, and Community Association Managers (Source: Bureau of Labor Statistics, May 2015 National Occupational Employment and Wage Estimates.)

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including using appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 25, 2017.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2017–11396 Filed 6–1–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2017–N050; FF08ESMF00–FXES11140800000–178]

Proposed Habitat Conservation Plan for South Sacramento County, California; Joint Draft Environmental Impact Statement/Environmental Impact Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft environmental impact statement and draft environmental impact report (EIS/EIR),

which evaluates the impacts of, and alternatives to, the proposed South Sacramento Habitat Conservation Plan (SSHCP). The SSHCP was submitted by six permit applicants in support of permit applications under the Endangered Species Act of 1973 as amended (ESA), for the incidental take of federally listed and other covered species resulting from the implementation or approval of future SSHCP covered activities, including urban development projects, within a 317,656-acre planning area. We request review and comment on the draft SSHCP and the draft EIS/EIR from local, State, and Federal agencies; Tribes; and the public.

DATES: *Submitting Comments:* To ensure consideration, we must receive written comments by 5 p.m. on August 31, 2017. *Meeting Dates:* See Meetings under **SUPPLEMENTARY INFORMATION** for public meeting dates.

ADDRESSES: You may obtain documents by one of the following methods:

- *Internet:* You may obtain electronic copies of the draft EIS/EIR and proposed HCP document on the SSHCP Web site at *http://www.southsachcp.com,* or on the Sacramento County Project Viewer Web site at *https://planningdocuments.saccounty.net/ViewProjectDetails.aspx?ControlNum=2003-0637.*
- *U.S. Mail:* CD–ROMs of the draft EIR/EIS and the draft SSHCP are available, by request, from the County Environmental Coordinator, at the County of Sacramento, Office of Planning and Environmental Review, 827 7th Street, Room 225, Sacramento, CA 95814; or by email at *SSHCP@saccounty.net;* or by phone at (916) 874–6141. Please note that your request is in reference to the SSHCP.
- *In-Person:* Copies of the draft EIR/EIS and the draft SSHCP documents are also available for public inspection and review at the following locations, during normal business hours:

○ Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento CA 95825.

○ County of Sacramento, 827 7th Street, Room 225, Sacramento, CA 95814.

○ Sacramento Public Library, Central Library, 828 I Street, Sacramento, CA 95814.

You may submit written comments by one of the following methods:

- *Electronically:* Submit via email to: *SSHCP@saccounty.net,* and include ''SSHCP'' in the subject line,
- *By hard copy:* (1) Submit by U.S. mail to: County Environmental Coordinator, at the County of Sacramento address above, or call (916) 874–6141 to make an appointment during regular business hours to drop off written comments at that location; or (2) submit by U.S. mail to Jan C. Knight, Deputy Field Supervisor, at the Sacramento Fish and Wildlife Office address above, or by facsimile to (916) 414–6714, or call (916) 414–6700 to make an appointment during regular business hours to drop off written comments at that location.

Meeting addresses: See Meetings below under **SUPPLEMENTARY INFORMATION** for locations and addresses of public meetings.

FOR FURTHER INFORMATION CONTACT: (1) Contact Nina Bicknese, Endangered Species Division, or Jan C. Knight, Deputy Field Supervisor, at the Sacramento Fish and Wildlife Office address shown above, or at (916) 414–6700 (telephone) for information on the SSHCP EIS/EIR. If you use a telecommunications device for the deaf, please call the Federal Relay Service at (800) 877–8339, or (2) County Environmental Coordinator, or Marianne Biner, Senior Planner, at the County of Sacramento address shown above, or at (916) 874–6141 for information on the draft SSHCP EIS/EIR; or (3) Richard Radmacher, Senior Planner, at the County of Sacramento address shown above, or at (916) 874–5369 for information on the draft SSHCP and associated documents.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft SSHCP in compliance with section 10(c) of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544; ESA), and we announce the availability of the draft environmental impact statement and environmental impact report (SSHCP EIS/EIR), prepared pursuant to the National Environmental Policy Act of 1970 as amended (42 U.S.C. 4321 *et seq.;* NEPA) and its implementing regulations (40 CFR 1500–1508), and also prepared pursuant to the California Environmental Quality Act (CEQA) as further described in the draft SSHCP EIS/EIR. We have prepared a joint EIS/EIR due to the combined local, State, and Federal discretionary actions and permits associated with the SSHCP. The co-lead agencies for the SSHCP EIS/EIR are Sacramento County, pursuant to CEQA, and the Service, pursuant to NEPA. The cooperating agencies are the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the California Department of Fish and Wildlife. With this notice, we continue the HCP process, which started through a notice in the **Federal Register** on November 4, 2013 (78 FR 66058), in which we announced the intent to prepare a NEPA document for the draft SSHCP.

Background

Section 9 of the ESA prohibits the ''take'' of fish and wildlife species that are federally listed as endangered under section 4 of the ESA (16 U.S.C. 1533, 1538). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal HCP program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.*

The purpose of issuing an ITP to the five permit applicants would be to permit incidental take of 28 covered species resulting from planned urban development and associated transportation and infrastructure projects that would be permitted or authorized by the County of Sacramento, City of Galt, City of Rancho Cordova, the Sacramento County Water Agency, and the Capital SouthEast Connector Joint Powers Authority (together, the permit applicants). The approval of the draft SSHCP and issuance of the ITP is conditioned on the draft SSHCP meeting the criteria in section 10(a)(2)(B) of the ESA. The draft SSHCP is a regional, multi-agency strategy to assure permanent conservation of the 28 covered species and their habitats within the planning area, while providing future urban development and infrastructure covered activities with a more streamlined and more predictable Federal and State authorization and permitting process. The draft SSHCP covered activities incorporate measures that are intended to minimize and mitigate the impacts of the taking to the maximum extent practicable. The covered species include the federally endangered vernal pool tadpole shrimp (*Lepidurus packardi*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), threatened Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), threatened California tiger salamander (*Ambystoma californiense*), and threatened giant garter snake (*Thamnophis gigas*), as well as 23 unlisted species that have the potential to become listed during the proposed permit term. The draft SSHCP also proposes to provide a comprehensive approach to the protection and long-term management of the relatively undisturbed vernal pool ecosystem remaining in the 317,656-acre Planning Area.

Alternatives

The EIR/EIS studies three alternatives in detail. Other reasonable alternatives were considered during the process of developing the HCP and the EIS/EIR, but others were not evaluated in detail because they did not meet the underlying needs or the purposes and objectives of the lead-agencies, as discussed in the EIS/EIR. The three alternatives are:

No Action Alternative: No ESA section 10(a)(1)(B) permit would be issued to the five permit applicants. Instead, future urban development projects and activities with potential to impact federally listed species would continue to obtain individual ESA authorizations on a project-by-project basis through section 7 consultations, if a Federal nexus exists, or through an individual ITP under section 10 of the ESA. Under the No Action Alternative, there would be no regional or comprehensive means to coordinate and standardize mitigation provided by multiple projects implemented over many years, or to provide comprehensive management of new mitigation lands in south Sacramento County.

Proposed Action Alternative: This alternative is issuance of an ITP by the Service to the five permit applicants, with a permit term of 50 years. The ITP would authorize take from covered activities on non-Federal lands in the planning area. Covered activities include planned land uses described in general plans of Sacramento County, the City of Rancho Cordova, and City of Galt, including residential, commercial, and industrial development, and specific transportation, irrigation water, and wastewater projects. Current in-stream maintenance activities will also continue as a covered activity. Each category of proposed covered activities includes measures to avoid or minimize incidental take of the covered species, including project design modifications. Approximately 33,639 acres of natural land covers and species habitat would be directly and indirectly impacted over the permit term. The proposed conservation strategy includes the establishment of a 36,282-acre interconnected regional preserve system that would be comprised of relatively large, contiguous blocks of natural land covers with species-habitat. All lands in the 36,282-acre preserve system would be permanently preserved, monitored, and managed in perpetuity. In addition, the proposed conservation strategy includes approximately 1,787 acres of aquatic resources that would be re-established or established within this preserve system. All preserves will have endowments to cover long-term management needs. A preserve system management, monitoring, and reporting plan would assess the draft SSHCP's progress toward achievement of each biological goal and objective, and ensure that habitat conservation keeps pace with impacts.

Reduced Permit Term Alternative. As with the proposed action, the Service would issue an ITP to the five permit applicants. However, the ITP would have a permit term of 30 years, which would more closely coincide with the durations of the approved general plans and other planning documents of the permit applicants. The categories of covered activities for the reduced permit term alternative would be the same as described for the proposed action, and approximately 19,371 acres natural land covers and species-habitat would be directly and indirectly impacted by the covered activities. The biological goals for the planning area would be the same as those identified for the proposed action/proposed project. The preserve system would have less connectivity and would be smaller, totaling approximately 20,044 acres. Approximately 1,723 acres of aquatic resources would be re-established or established. Similarly as with the proposed action alternative, a preserve system management, monitoring, and reporting plan would assess progress toward achievement of biological goals for a 30-year permit term.

Meetings: The meeting dates are:

1. June 21, 2017, 7 p.m. to 9 p.m., Wilton, CA.
2. June 26, 2017, 7 p.m. to 9 p.m., Rancho Cordova, CA.
3. July 6, 2017, 7 p.m. to 9 p.m., Galt, CA.

The meeting addresses are:

1. Wilton: Wilton Community Center, 9717 Colony Road, Wilton, CA 95693.
2. Rancho Cordova: Rancho Cordova City Hall, American River Room North, 2729 Prospect Park Drive, Rancho Cordova, CA 95670.
3. Galt: Littleton Community Center, 410 Civic Drive, Galt, CA 95632.

Request for Comments

Consistent with section 10(c) of the ESA, we invite the submission of written comments, data, views, or arguments with respect to the proposed incidental take permit application, the draft SSHCP, and the permitting decision. We particularly seek comments on the efficacy and effectiveness of the proposals contained in the draft SSHCP in producing the desired results for the covered species in this Planning Area, the sufficiency of the EIS/EIR in discussing possible impacts upon the environment, the ways in which adverse effects would be minimized, and alternatives to the proposed action.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

The lead agencies will accept public comments on the draft SSHCP and the draft SSHCP EIS/EIR during a public review and comment period, which ends 90 days after publication of this notice in the **Federal Register**. We will evaluate all public comments we receive on the draft HCP, the associated documents, and the draft EIS/EIR to determine whether the permit application and draft HCP meets requirements of ESA section 10(a), and draft EIS/EIR meets the requirements of the NEPA regulations. If the Service determines that those requirements are met, we will prepare a final SSHCP and EIS/EIR, which will be available for a 30-day minimum review period prior to the Service's final permit decision.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4721 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Michael Fris,

Assistant Regional Director, U.S. Fish and Wildlife Service Pacific Southwest Region, Sacramento, California.

[FR Doc. 2017–11293 Filed 6–1–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2017–0020; FXIA16710900000–178–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before July 3, 2017.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2017–0020.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2017–0020; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Viewing Comments: Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: *Endangered Species Applications:* Joyce Russell, Government Information Specialist, Division of Management Authority, U.S. Fish and Wildlife Service Headquarters, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2023; facsimile 703–358–2280.

Wild Bird Conservation Act Applications: Craig Hoover, Chief, Division of Management Authority, U.S. Fish and Wildlife Service Headquarters, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095; facsimile 703–358–2298.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685, January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

We invite the public to comment on applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (16 U.S.C. 531 *et seq.;* ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

Applicant: Tony Goldberg, University of Wisconsin, Madison, WI; PRT–16647C

The applicant requests a permit to import blood, saliva, and hair samples from 48 Wild born chimpanzees (*Pan troglodytes*) and two captive-born chimpanzees (*Pan troglodytes*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: U.S. Centers for Disease Control and Prevention, Atlanta, GA; PRT–14106C

The applicant requests a permit to import biological samples, common chimpanzee (*Pan troglodytes*), from captive-bred or wild species for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Schubot Exotic Bird Health Center, College Station, TX; PRT–19878C

The applicant requests a permit to import biological samples from the

Great green macaw, (*Ara Ambiguus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: University of Alaska Fairbanks, Dept. Veterinary Medicine, Fairbanks, AK; PRT–24212C

The applicant requests a permit to import biological samples from green sea turtle, (*Chelonia mydas*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Crocodile Conservation Institute, Hamer, SC; PRT–00190C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos tortoise *(Chelonoidis nigra*), Siamese crocodile (*Crocodylus siamensis*), African slender-snouted crocodile (*Crocodylus cataphractus*), Chinese alligator *(alligator sinensis*), Dwarf crocodile *(osteolamus tetraspis*), Broad-snouted caiman (*Caiman latirostris*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: McCarthy's Wildlife Sanctuary, West Palm Beach, FL; PRT–95720B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos tortoise (*Chelonoidis nigra*), Radiated tortoise (*Astrochelys radiate*), Grand cayman inguana (*Cyclura nubilis lewisii*), Ring-tailed lemur *(Lemur catta*), Black and white ruffed lemur (*Varecia variegate*), Red ruffed lemur (*Varecia rubra*), cottontop tamarin (*Saguigus oedipus),* Clouded leopard (*Neofelis nebulosa*), Snow leopard (*Unicia unicia*), Spotted leopard (*Panthera pardus*), Africian lion (*Panthera leo*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zooworld Zoological and Botanical Conservatory, Panama City Beach, FL; PRT–99140B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Military macaw (*Ara miliaris*), Ring-tailed lemur, (*Lemur catta*), Black and white ruffed lemur (*Varecia variegate*), Red-ruffed lemur (*Varecia rubra*), Cottontop tamarin (*Saguinus oedipus*), Goeldi's marmoset (*Callimico goeldii*), Diana monkey (*Cerocpithecus diana),* Siamang (*Symphalangus syndactylus*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Michael Lloret, Miami, FL; PRT–04218C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos tortoise (*Chelonoidis nigra*), Radiated tortoise (*Astrocheleys radiata*), aquatic box turtle (*Terrapene coahuila*), Yellow-spot river turtle *(Podocnemis unifilis*), Spotted pond turtle (*Geoclemys hamiltoni*), River tarrapin (*Batagur baska*), Grand cayman inguana (*Cyclura lewisii*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: James Lee; Livermore, CA; PRT–93493B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos tortoise (*Geochelone nigra*) and an Aquatic box turtle (*Terrapene coahuila*). This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the **Federal Register** notice announcing the permit issuance date by searching in *www.regulations.gov* under the permit number listed above in this document.

V. Public Comments

You may submit your comments and materials concerning this notice by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will post all hardcopy comments on *http://www.regulations.gov.*

VI. Authorities

Endangered Species Act of 1973 (16 U.S.C. 1531).

Joyce Russell,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2017–11444 Filed 6–1–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

[17XD0120OS.DX68201 .QAGENLAM.DOTN00000 .000000.DS68241000]

Tribal Listening Session; Oklahoma City Probate Hearings Division Field Office

In notice document 2017–11186, beginning on page 24990 in the issue of Wednesday, May 31, 2017, make the following corrections:

1. On page 24990, lines three and four in the **SUMMARY** section: ''Probate Hearings Division (Ph.D.)'' should read ''Probate Hearings Division (PHD)''.

2. On page 24990, line six in the **SUMMARY** section: ''Ph.D.'' should read ''PHD''.

3. On page 24990, line seven in column two: ''Ph.D.'' should read ''PHD''.

4. On page 24990, line three in the **ADDRESSES** section: ''email—Ph.D@oha.doi.gov'' should read ''email—phd@oha.doi.gov''.

5. On page 24991, lines two and three in the first column, ''email—Ph.D@oha.doi.gov'' should read ''email—phd@oha.doi.gov''.

6. On page 24991, line fifty-seven in the first column, ''Ph.D.'' should read ''PHD''.

7. On page 24991, line nineteen in the second column, ''Ph.D.'' should read ''PHD''.

[FR Doc. C1–2017–11186 Filed 6–1–17; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003; DS63600000 DR2000000.PMN000 178D0102R2]

30-Day Extension of Nomination Period for the Royalty Policy Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: On April 3, 2017, the U.S. Department of the Interior (DOI)

published a notice establishing the Royalty Policy Committee (Committee) and requesting nominations and comments. This notice extends the nomination period end date by 30 additional days.

DATES: The deadline for nominations published in the notice of April 3, 2017 (82 FR 16222) is extended. Nominations for the Committee must be submitted by July 3, 2017.

ADDRESSES: You may submit nominations by any of the following methods:

- Mail or hand-carry nominations to Ms. Kim Oliver, Department of the Interior, Office of Natural Resources Revenue, 1849 C Street, NW., MS 5134, Washington, DC 20240.
- Email nominations to: *Kimiko.oliver@onrr.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Judy Wilson, Office of Natural Resources Revenue; telephone (202) 208–4410; email: *judith.wilson@onrr.gov.*

SUPPLEMENTARY INFORMATION: The Committee is established under the authority of the Secretary of the Interior (Secretary) and regulated by the Federal Advisory Committee Act. The purpose of the Committee is to ensure that the public receives the full value of the natural resources produced from Federal lands. The duties of the Committee are solely advisory in nature.

The Committee will not exceed 28 members and will be composed of Federal and non-Federal members in order to ensure fair and balanced representation.

The Secretary will appoint non-Federal members in the following categories:

- Up to six members representing the Governors of States that receive more than $10,000,000 annually in royalty revenues from onshore and offshore Federal leases
- Up to four members representing the Indian Tribes that are engaged in activities subject to laws relating to mineral development that is specific to one or more Indian Tribes
- Up to six members representing various mineral and/or energy stakeholders in Federal and Indian royalty policy
- Up to four members representing academia and public interest groups

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable DOI to make an informed decision regarding meeting the membership requirements of the Committee and to permit DOI to contact a potential member. If you already submitted a nomination by one of the methods described in the **ADDRESSES** section of this Notice, you need not re-submit the nomination. We will consider all nominations received by these methods from April 3, 2017 through July 3, 2017. Additional information is available in the Royalty Policy Committee Establishment; Request for Nominations notice published on April 3, 2017 (82 FR 16222).

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire nomination submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your submission to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2017–11441 Filed 6–1–17; 8:45 am]

BILLING CODE 4335–30–P

NATIONAL INDIAN GAMING COMMISSION

2017 Final Fee Rate and Fingerprint Fees

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.2, that the National Indian Gaming Commission has adopted its 2017 final annual fee rates of 0.00% for tier 1 and 0.062% (.00062) for tier 2, which remain the same as the 2017 preliminary fee rates. The tier 2 annual fee rate maintains the lowest fee rate adopted by the Commission since 2010. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the 2017 final fee rate on Class II revenues shall be 0.031% (.00031) which is one-half of the annual fee rate. The final fee rates being adopted here are effective June 1, 2017, and will remain in effect until new rates are adopted.

Pursuant to 25 CFR 514.16, the National Indian Gaming Commission has also adopted its 2017 final fingerprint processing fees of $18 per card effective June 1, 2017. These fees remain the same as the 2017 preliminary fingerprint processing fees.

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission, which is charged with regulating gaming on Indian lands.

Commission regulations (25 CFR part 514) provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates and the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission. All gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations, and report and pay any fees that are due to the Commission.

Pursuant to 25 CFR part 514, the Commission must also review regularly the costs involved in processing fingerprint cards and set a fee based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe.

Dated: May 25, 2017.

Jonodev Osceola Chaudhuri,

Chairman.

Dated: May 25, 2017.

Kathryn C. Isom-Clause,

Vice Chair.

Dated: May 25, 2017.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2017–11434 Filed 6–1–17; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23210; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Lava Beds National Monument, Tulelake, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Lava Beds National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Lava Beds National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lava Beds National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Lawrence J. Whalon Jr., Superintendent, Lava Beds National Monument, P.O. Box 1240, Tulelake, CA 96134, telephone (530) 677–8101, email *larry_whalon@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Lava Beds National Monument, Tulelake, CA, and in the physical custody of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA. The human remains and associated funerary objects were removed from within the boundaries of Lava Beds National Monument, Modoc and Siskiyou Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Lava Beds National Monument.

Consultation

A detailed assessment of the human remains was made by Lava Beds National Monument professional staff in consultation with representatives of the Klamath Tribes and The Modoc Tribe of Oklahoma.

History and Description of the Remains

In 1952, human remains representing, at minimum, two individuals were removed from site CA–SIS–0142 in Siskiyou County, CA, during legally authorized excavations by Robert J. Squier and Gordon L. Grosscup under the auspices of the Department of Anthropology, University of California, Berkeley, CA. No known individuals were identified. No associated funerary objects are present.

In 1952, human remains representing, at minimum, two individuals were removed from site CA–MOD–0048 in Modoc County, CA, during legally authorized excavations by Robert J. Squier and Gordon L. Grosscup under the auspices of the Department of Anthropology, University of California, Berkeley, CA. No known individuals were identified. No associated funerary objects are present.

In 1952, human remains representing, at minimum, 14 individuals were removed from site CA–MOD–0049 in Modoc County, CA, during legally authorized excavations by Robert J. Squier and Gordon L. Grosscup under the auspices of the Department of Anthropology, University of California, Berkeley, CA. No known individuals were identified. The 15 associated funerary objects are 3 cordage fragments, 1 projectile point fragment, 2 scrapers, 3 basketry fragments, 1 charcoal fragment, and 5 matting fragments.

Based on burial type and location, as well as available archeological and historical information, it is likely that the remains are Native American. Artifacts found near the burial locations suggest a late prehistoric age and are characteristic of prehistoric Modoc funerary practices in this region. In addition, ethnographic and archeological evidence, including archeological site context and types of funerary objects, indicates that all three sites were occupied by ancestral Modoc peoples.

During consultation, representatives from associated tribes stated that their oral traditions indicate affiliation with the Modoc. The Modoc have been identified as aboriginal to the area where the three sites are located by the U.S. Indian Claims Commission. Geographical, archeological, linguistic, folklore, oral tradition, and historical evidence support that association. Today, contemporary descendants of the Modoc are members of both the Klamath Tribes and The Modoc Tribe of Oklahoma.

Determinations Made by Lava Beds National Monument

Officials of Lava Beds National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 15 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Klamath Tribes and The Modoc Tribe of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lawrence J. Whalon Jr., Superintendent, Lava Beds National Monument, P.O. Box 1240, Tulelake, CA 96134, telephone (530) 677–8101, email *larry_whalon@nps.gov,* by July 3, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Klamath Tribes and The Modoc Tribe of Oklahoma may proceed.

Lava Beds National Monument is responsible for notifying the Klamath Tribes and The Modoc Tribe of Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11454 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23203; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Ocmulgee National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Ocmulgee National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ocmulgee National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA. The human remains and associated funerary objects were removed from Funeral Mound, Bibb County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Ocmulgee National Monument.

Consultation

A detailed assessment of the human remains was made by Ocmulgee National Monument professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), Shawnee Tribe, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

Between 1933 and 1934, human remains representing, at minimum, four individuals were removed from Funeral Mound C in Bibb County, GA, during legally authorized projects sponsored by the Works Progress Administration. No known individuals were identified. The 42 associated funerary objects are 1 adz, 1 biface, 1 bowl, 1 animal bone, 2 gorgets, 1 jar, 1 elbow pipe, 2 projectile points, 4 scrapers, 1 piece of shatter, 2 worked shells, 5 spoons, and 20 vessel fragments.

While Mound C is a burial mound dating to the Macon Plateau phase of the Early Mississippian period (A.D. 900 to A.D. 1100), several historic burials were placed in the upper levels of the mound and in the adjacent village area. Burials excavated at this site were identified as historic Creek on the basis of European trade goods found in association with the remains. The historic Creek town associated with the trading post near Mound C has long been thought to be Ocmulgee. Residents of Ocmulgee moved to the Chattahoochee River after 1717.

Historical documentation reflects a great deal of movement and reorganization among the Creeks and the Creek Confederacy during the 18th and 19th centuries. Ten present-day Indian tribes include Creek descendants—the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.

Determinations Made by Ocmulgee National Monument

Officials of Ocmulgee National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 42 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice

that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov,* by July 3, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town may proceed.

Ocmulgee National Monument is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), Shawnee Tribe, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11448 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23291; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Kansas State Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Kansas State Historical Society. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Kansas State Historical Society at the address in this notice by July 3, 2017.

ADDRESSES: Dr. Robert J. Hoard, Kansas State Historical Society, 6425 SW. 6th Avenue, Topeka, KS 66615–1099, telephone (785) 272–8681, extension 269, *rhoard@kshs.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Kansas State Historical Society, Topeka, KS. The human remains were removed from site 14SH305 in Shawnee County, KS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Kansas State Historical Society professional staff in consultation with representatives of the Kaw Nation, Oklahoma.

History and Description of the Remains

On June 12, 2012, human remains representing, at minimum, one individual were removed from midden area 230 of site 14SH305 in Shawnee County, KS, during excavation of the site. Excavation in the immediate area ceased and the Shawnee County Sheriff was contacted (case no. 12–03361). Further excavation in site 14SH305 found no other human remains. No other provenience information is available. The human remains consist of one molar tooth. No known individual was identified. No associated funerary objects are present.

In or about 2013, human remains representing, at minimum, one individual were removed from feature 303 of site 14SH305 by an analyst while sorting very small skeletal remains. No other provenience information is available. The human remains consist of two human phalanges. No known individual was identified. No associated funerary objects are present.

Site 14SH305 is a known historic Kansa village, specifically Fool Chief's Village. Based on historical sources, it was originally recorded as an archeological site by Kansas State Archeologist Roscoe Wilmeth in 1957. The village was part of the Kansa Reservation, and was occupied from 1828 to 1844 by approximately 700–800 members of the Kansa tribe. In 2012 and 2013, the Kansas Historical Society conducted archeological excavations of the site in order to mitigate the effects of Kansas Department of Transportation Project Number 24–89 K–7431–01. The present-day descendants of the Kansa are the Kaw Nation, Oklahoma.

Determinations Made by the Kansas State Historical Society

Officials of the Kansas State Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Kaw Nation, Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian

organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Robert J. Hoard, Kansas State Historical Society, 6425 SW. 6th Avenue, Topeka, KS 66615–1099, telephone (785) 272–8681, extension 269, *rhoard@kshs.org,* by July 3, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Kaw Nation, Oklahoma may proceed.

The Kansas State Historical Society is responsible for notifying the Kaw Nation, Oklahoma that this notice has been published.

Dated: April 21, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11446 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23205; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Ocmulgee National Monument. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ocmulgee National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Ocmulgee National Monument.

History and Description of the Cultural Items

Between 1933 and 1958, 25,127 cultural items were removed from the Trading Post area of the Macon Plateau in Bibb County, GA, during multiple legally authorized excavations. The human remains were repatriated to culturally affiliated tribes in 2015 by the Smithsonian Institution, National Museum of Natural History. The 25,127 unassociated funerary objects are 2 abraders, 2 armbands, 41 balls, 22,045 beads, 16 bells, 10 bifaces, 499 animal remains, 3 bags of animal bone, 1 liquor bottle, 2 bowls, 1 bullet, 33 buttons, 5 charcoal fragments, 1 chopper, 29 pieces of fired clay, 2 pieces of unfired clay, 10 concretions, 3 cores, 2 cuff links, 11 pieces of daub, 101 pieces of debitage, 303 flakes, 28 flake tools, 2 flat rectangular copper fragments, 98 shells, 1 glass fragment, 1 gorget, 1 graver, 6 gun flints, 1 knife, 2 metal fragments, 1 metal pendant, 1 mug, 4 musket balls, 3 nails, 2 plant fragments, 1 nutting stone, 1 pipe, 15 projectile points, 7 preforms, 1 rivet, 5 scrapers, 1 seed, 33 pieces of shatter, 2 bags of shell, 2 worked shells, 4 pieces of slag, 1 spiral spring, 53 unmodified stones, 2 sword fragments, 3 tobacco pipes, 1 tack, 1 bag of unmodified stone, 1,705 vessel fragments, 5 windowpane fragments, 6 wires, 1 worked stone, and 4 flintlock muskets.

The trading post at Macon was operated by the British from 1685–1717. The historic Creek town associated with the trading post has long been thought to have been Ocmulgee. Burials excavated at this site were identified as historic Creek on the basis of European trade goods found in association with the remains. Residents of the Creek town of Ocmulgee moved to the Chattahoochee River after 1717. Historical documentation reflects a great deal of movement and reorganization among the Creeks and the Creek Confederacy during the 18th and 19th centuries. Ten present-day Indian tribes are thought to include Creek descendants including the Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks, Seminole Tribe of Florida, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.

Determinations Made by Ocmulgee National Monument

Officials of Ocmulgee National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 25,127 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov,* by July 3, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary

objects to Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town may proceed.

Ocmulgee National Monument is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), Shawnee Tribe, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11451 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23204; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Ocmulgee National Monument has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on June 18, 2001. This notice corrects the number of associated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Ocmulgee National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ocmulgee National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA. The human remains and associated funerary objects were removed from Lamar Mounds and Village, Bibb County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Ocmulgee National Monument.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (66 FR 32838–32840, June 18, 2001). During review of collections additional associated funerary objects were identified and some objects were determined to be unassociated funerary objects. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (66 FR 32838, June 18, 2001), column 3, paragraph 4, sentence 3 is corrected by substituting the following sentence:

The 65 associated funerary objects are 1 bead, 1 biface, 21 animal bones, 1 celt, 1 core, 1 ear plug, 1 shell, 12 pins, 1 tobacco pipe, 1 projectile point, 1 paint pot, 8 unmodified stones, 1 flake tool, and 14 vessel fragments.

In the **Federal Register** (66 FR 32839, June 18, 2001), column 2, paragraph 2, sentence 2 is corrected by substituting the following sentence:

The superintendent of Ocmulgee National Monument also has determined that, pursuant to 43 CFR 10.2(d)(2), the 121 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov,* by July 3, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma may proceed.

Ocmulgee National Monument is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee

Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), Shawnee Tribe, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11449 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23207; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Ocmulgee National Monument. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ocmulgee National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Ocmulgee National Monument.

History and Description of the Cultural Items

Between 1933 and 1938, 436 cultural items were removed from Lamar Mounds and Village in Bibb County, GA, during legally authorized projects sponsored by the Works Progress Administration. The human remains were repatriated to culturally affiliated tribes in 2015 by the Smithsonian Institution, National Museum of Natural History. The 436 unassociated funerary objects are 3 awls, 25 beads, 1 bag of beads, 1 blade, 1 burin, 3 celts, 1 piece of fired clay, 1 piece of daub, 4 discoidals, 2 earplugs, 24 flakes, 2 animal bones, 5 shells, 1 gorget, 1 jar, 1 projectile point, 3 scrapers, 1 worked shell, 7 soil samples, 1 flake tool, and 348 vessel fragments.

The Lamar Mounds and Village site consists of two mounds, A and B, and a palisaded village area. Archeological evidence indicates that the Lamar Mounds and Village site was occupied during the entire Middle and Late Mississippian periods (A.D. 1200–1650). The regional manifestation of archeological resources from the Mississippian period has been identified as the Lamar Culture. Archeological evidence indicates that the Lamar Culture ceramic types found at Lamar Mounds and Village are closely related to historic Creek and Cherokee ceramic traditions.

The Lamar site is also believed to be the town of Ichisi (Spanish) or Ochisi (Portuguese) encountered by the Hernando de Soto expedition in 1540. Occupation of the site may have continued into the early 18th century. Between A.D. 1685 and 1717, the English used variations of the name Ochesehatchee or Ochese Creek to refer to the river later called the Ocmulgee River. The towns and people living along Ochese Creek during that period were referred to as the Ochese (various spellings) Creek Nation, the Ochese Creek people, and, finally, simply the Creeks. The word Ochese and its variations has been traced from middle Georgia to the Chattahoochee River, then to Florida, and finally to Oklahoma. A squareground of this name existed in Oklahoma until the 1950s. There is an Ochese Street in Okmulgee, Oklahoma. Ethnohistorical information indicates that the Ichisi-Ochese were probably Hitchiti speakers, which would link them directly to Hitchiti speakers among the later Seminole and Miccosukee tribes. The Ichisi-Ochese may also be linked less directly to speakers of closely related Alabama and Koasati languages among the latter-day Alabama and Coushatta tribes.

Determinations Made by Ocmulgee National Monument

Officials of Ocmulgee National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 436 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jim David, Superintendent, Ocmulgee

National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov,* by July 3, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma may proceed.

Ocmulgee National Monument is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), Shawnee Tribe, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11452 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23289; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Allen County-Fort Wayne Historical Society, Fort Wayne, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Allen County-Fort Wayne Historical Society, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Allen County-Fort Wayne Historical Society. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Allen County-Fort Wayne Historical Society at the address in this notice by July 3, 2017.

ADDRESSES: Walter Font, Curator, Allen County-Fort Wayne Historical Society, 302 East Berry Street, Fort Wayne, IN 46802, telephone (260) 426–2882, email *wfont@comcast.net.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Allen County-Fort Wayne Historical Society, Fort Wayne, IN, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

On an unknown date, two cultural items were removed from a grave in the Lakeside District of Fort Wayne, Allen County, IN. At some time prior to 1947, the funerary objects were acquired from Mr. W.T. Angel by the Allen County-Fort Wayne Historical Society. No other provenience information is available. The 2 unassociated funerary objects are 1 animal tusk and 1 hatchet head.

In 1928, one cultural item was removed from a grave on Prospect Avenue in Fort Wayne, Allen County, IN. In 1933, the funerary object was acquired from Mr. Theodore Waldo by the Allen County-Fort Wayne Historical Society. No other provenience information is available. The 1 unassociated funerary object is a stone pipe bowl.

On an unknown date, five cultural items were removed from a grave in the Spy Run District of Fort Wayne, Allen County, IN. At some time prior to 1947, the funerary objects were acquired from an unknown source by the Allen County-Fort Wayne Historical Society. Catalog records state that the funerary objects were found in an ''Indian grave in the Spy Run District, Fort Wayne.'' The 5 unassociated funerary objects are 4 silver brooches and 1 brass button.

On an unknown date, two cultural items were removed from a grave on West Washington Street in Fort Wayne, Allen County, IN. In 1934, the objects were acquired from an unknown source by the Allen County-Fort Wayne Historical Society. Catalog records state that the funerary objects were found in a grave at ''1415 W. Washington Street.'' The 2 unassociated funerary objects are 2 steel strikers.

On unknown dates, seven cultural items were removed from graves in ''the Miami burial ground'' in the Spy Run District of Fort Wayne, Allen County, IN. In about 1928, the funerary objects were acquired from Mr. Jacob M. Stouder, a local collector, by the Allen County-Fort Wayne Historical Society. The 7 unassociated funerary objects are 1 set of pistol fragments, 1 tomahawk, 1 stone pipe, 2 clay pipes, and 2 stone tools.

On an unknown date, one cultural item was removed from a grave at Lawton Place in Fort Wayne, Allen County, IN. In 1932, the funerary object was acquired from Mrs. George Gillie by the Allen County-Fort Wayne Historical Society. No other provenience information is available. The 1 unassociated funerary object is an iron hoe blade.

In May of 1933, 10 cultural items were removed from a grave on Prospect Avenue in Fort Wayne, Allen County, IN. In 1935, the funerary objects were purchased from Mr. Orville Smith by the Allen County Fort Wayne-Historical Society. No other provenience information is available. The 10 unassociated funerary objects are 1 set of musket fragments, 1 clay pipe, 1 metal tack hammer, 2 metal files, 2 metal harpoon tips, 1 copper tube bead, 1 pair of scissors fragments, and 1 whetstone.

In about 1910, one cultural item was removed from Lawton Place in Fort Wayne, Allen County, IN, by Vernon Ferguson. Mr. Ferguson removed the funerary object from a grave exposed during excavation for a house basement. In 1984, the funerary object was acquired from Mr. Ferguson by the Allen County-Fort Wayne Historical Society. The 1 unassociated funerary object is a copper pot with iron bail.

In 1907, one cultural item was removed from the grave of Miami Indian Chief Coesse in Huntington County, IN. At some time prior to 1947, the funerary object was acquired from Mr. Charles More by the Allen County Fort Wayne-Historical Society. No other provenience information is known. Chief Coesse was a Miami Indian who resided in northeast Indiana. He died in about 1853, and was buried near Roanoke, IN, and has no known descendants. Evidence from Society records and secondary sources indicate that the unassociated funerary object is affiliated with a Miami Tribal chief. The 1 unassociated funerary object is a small glass vial containing beads.

The above listed sites are estimated to date from the late 1700s to the early 1800s. The evidence available indicates that the sites are related to the Miami Tribe of Oklahoma, whose tribal lands were located in northeast Indiana from about 1710 to the early 1800s. Their villages were at or near the present location of Fort Wayne, IN, primarily north of the confluence of the St. Joseph and St. Mary's Rivers which, together, form the Maumee River. These areas include the Spy Run District, including Prospect Avenue and Lawton Place, and the Lakeside area of Fort Wayne. The assessment that these unassociated funerary objects should be attributed to the Miami Tribe of Oklahoma was confirmed by the Miami Tribe of Oklahoma and Pokagon Band of Potawatomi Indians, Michigan and Indiana, during consultation.

Determinations Made by the Allen County-Fort Wayne Historical Society

Officials of the Allen County-Fort Wayne Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 30 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Miami Tribe of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Walter Font, Curator, Allen County-Fort Wayne Historical Society, 302 East Berry Street, Fort Wayne, IN 46802, telephone (260) 426–2882, email *wfont@comcast.net,* by July 3, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Miami Tribe of Oklahoma may proceed.

The Allen County-Fort Wayne Historical Society is responsible for notifying the Miami Tribe of Oklahoma and Pokagon Band of Potawatomi Indians, Michigan and Indiana, that this notice has been published.

Dated: April 21, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11447 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23209; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Ocmulgee National Monument has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on June 18, 2001. This notice corrects the minimum number of individuals and number of associated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Ocmulgee National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ocmulgee National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA. The human remains and associated funerary objects were removed from Trading Post, Bibb County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Ocmulgee National Monument.

This notice corrects the minimum number of individuals and number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (66 FR 32842–32843, June 18, 2001). Additional individuals and associated funerary objects were identified during review of collections.

Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (66 FR 32842, June 18, 2001), column 2, paragraph 1, sentences 1–3 are corrected by substituting the following sentences:

Between 1957 and 1958, human remains representing 17 individuals were recovered from the Trading Post area of the Macon Plateau unit of Ocmulgee National Monument. No known individuals were identified. The 17,037 associated funerary objects are 2 axes, 4 balls, 1 musket ball, 16,147 beads, 1 biface, 2 blades, 217 animal remains, 1 piece of charcoal, 6 pieces of fired clay, 1 concretion, 2 cores, 3 pieces of daub, 46 flakes, 7 flake tools, 2 glass fragments, 1 gorget, 5 gunflints, 1 stone knife, 38 jars, 2 iron knives, 4 metal fragments, 2 shells, 1 ornament, 4 tobacco pipes, 2 flintlock pistols, 2 plant fragments, 1 projectile point, 3 preforms, 1 rifle, 3 scrapers, 4 seeds, 3 pieces of shatter, 13 gun shots, 1 shotgun shell, 2 spiral springs, 6 unmodified stones, 1 uniface, 1 bag of unmodified stone, and 494 vessel fragments.

In the **Federal Register** (66 FR 32842, June 18, 2001), column 3 paragraph 2, sentences 1–2 are corrected by substituting the following sentences:

Based on the above-mentioned information, the superintendent of Ocmulgee National Monument has determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 21 individuals of Native American ancestry. The superintendent of Ocmulgee National Monument also has determined that, pursuant to 43 CFR 10.2(d)(2), the 32,022 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or late as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov,* by July 3, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town may proceed.

Ocmulgee National Monument is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Shawnee Tribe, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11450 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–23208; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Ocmulgee National Monument. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ocmulgee National Monument at the address in this notice by July 3, 2017.

ADDRESSES: Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Ocmulgee National Monument, Macon, GA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Ocmulgee National Monument.

History and Description of the Cultural Items

Between 1933 and 1934, 99 cultural items were removed from Funeral Mound C in Bibb County, GA, during legally authorized projects sponsored by the Works Progress Administration. The human remains were repatriated to culturally affiliated tribes in 2015 by the Smithsonian Institution, National Museum of Natural History. The 99 unassociated funerary objects are 3 spoons, 61 beads, 1 bottle, 1 bowl, 4 vessel fragments, 1 metal fragment, 1 animal bone, 1 nail, 4 pendants, 2 projectile points, 1 scraper, 17 worked shells, 1 folding knife, and 1unmodified basalt stone.

While Mound C is a burial mound dating to the Macon Plateau phase of the Early Mississippian period (A.D. 900 to A.D. 1100), several historic burials were placed in the upper levels of the mound and in the adjacent village area. Burials excavated at this site were identified as historic Creek on the basis of European

trade goods found in association with the remains. The historic Creek town associated with the trading post near Mound C has long been thought to be Ocmulgee. Residents of Ocmulgee moved to the Chattahoochee River after 1717.

Historical documentation reflects a great deal of movement and reorganization among the Creeks and the Creek Confederacy during the 18th and 19th centuries. Ten present-day Indian tribes include Creek descendants—the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.

Determinations Made by Ocmulgee National Monument

Officials of Ocmulgee National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 99 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jim David, Superintendent, Ocmulgee National Monument, 1207 Emery Highway, Macon, GA 31217, telephone (478) 752–8257, email *jim_david@nps.gov,* by July 3, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Miccosukee Tribe of Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town may proceed.

Ocmulgee National Monument is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Alabama-Quassarte Tribal Town, Catawba Indian Nation (aka Catawba Tribe of South Carolina), Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Jena Band of Choctaw Indians, Kialegee Tribal Town, Miccosukee Tribe of Indians, Mississippi Band of Choctaw Indians, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)), Shawnee Tribe, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: April 3, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–11453 Filed 6–1–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–025]

Government In The Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 9, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–578 and 731–TA–1368 (Preliminary)(100- to 150-Seat Large Civil Aircraft from Canada). The Commission is currently scheduled to complete and file its determinations on June 12, 2017; views of the Commission are currently scheduled to be complete and filed on June 19, 2017.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 30, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–11568 Filed 5–31–17; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1059]

Certain Digital Cameras, Software, and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 28, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Carl Zeiss AG of Germany and ASML Netherlands B.V. of the Netherlands. A supplement to the complaint was filed on May 17, 2017. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the

United States after importation of certain digital cameras, software, and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,301,440 (''the '440 patent''); U.S. Patent No. 6,463,163 (''the '163 patent''); U.S. Patent No. 6,714,241 (''the '241 patent''); U.S. Patent No. 6,731,335 (''the '335 patent''); U.S. Patent No. 6,834,128 (''the '128 patent''); U.S. Patent No. 7,297,916 (''the '916 patent''); and U.S. Patent No. 7,933,454 (''the '454 patent''). The complaint further alleges that an industry in the United States is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of the Secretary, Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 26, 2017, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital cameras, software, and components thereof by reason of infringement of one or more of claims 1–4, 6–10, 12–14, 16–19, 21–28, 30–35, 37–44, 46–50, and 52–56 of the '440 patent; claims 1–4, 6, 7, 9–11, 14–16, and 19 of the '163 patent; claims 1–3, 5–12, and 14–18 of the '241 patent; claims 1–12 of the '335 patent; claims 1, 2, 4, 5, 12, 13, 16, 17, and 19 of the '128 patent; claims 1–9 of the '916 patent; and claims 1, 2, 4–12, and 16–28 of the '454 patent, and whether an industry in the United States is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Carl Zeiss AG, Carl-Zeiss-Straße, Oberkochen, Germany 73447.

ASML Netherlands B.V., De Run 6501, 5504DR, Veldhoven, Netherlands.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nikon Corporation, Shinagawa Intercity Tower C, 2–15–3, Konan, Minato-ku, Tokyo 108–6290, Japan.

Sendai Nikon Corporation, 277, Azahara, Tako, Natori, Miyagi 981–1221, Japan.

Nikon Inc., 1300 Walt Whitman Road, Melville, NY 11747–3064.

Nikon (Thailand) Co., Ltd., 1/42 Moo 5, Rojana Industrial Park, Rojana Road, Tambol Kanham, Amphur U-Thai, Ayutthaya 13210, Thailand.

Nikon Imaging (China) Co., Ltd., No. 11, Changjian South Road, New District, Wuxi, Jiangsu 214028, China.

PT Nikon Indonesia, 35th Floor, Wisma 46-Kota BNI, Jl. Jend. Sudirman Kav. 1, Jakarta, 10220, Indonesia.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–11390 Filed 6–1–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Preliminary)]

Tool Chests and Cabinets From China and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of tool chests and cabinets from China and Vietnam, provided for in subheadings 7326.90.35, 7326.90.86, and 9403.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 11, 2017, Waterloo Industries, Inc., Sedalia, Missouri filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of tool chests and cabinets from China and LTFV imports of tool chests and cabinets from Vietnam. Accordingly, effective April 11, 2017, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–575 and antidumping duty investigations Nos. 731–TA–1360–1361 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 18, 2017 (82 FR 18309). The conference was held in Washington, DC, on May 2, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on May 26, 2017. The views of the Commission are contained in USITC Publication 4697 (June 2017), entitled *Tool Chests and Cabinets from China and Vietnam: Investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Preliminary).*

By order of the Commission.

Issued: May 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–11391 Filed 6–1–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0043]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension With or Without Change, of a Previously Approved Collection: Drug Questionnaire (DEA–341)

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-day notice.

SUMMARY: Department of Justice (DOJ), Drug Enforcement Administration will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on March 28, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 day until July 3, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Diane E. Filler, Assistant Administrator, Drug Enforcement Administration, Human Resources Division, 8701 Morrissette Drive, Springfield, VA 22152. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Drug Questionnaire.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:* The form number is DEA–341. The sponsoring component is the Drug Enforcement Administration

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: None.

DEA is requesting an extension of a currently approved collection. This collection requires the drug history of any individual seeking employment with DEA. DEA policy states that a past history of illegal drug use may result in ineligibility for employment. The form asks job applicants specific questions about their personal history, if any, of illegal drug use.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 15,000 respondents will complete each form in approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,250 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Suite 3E.405A, Washington, DC 20530.

Dated: May 30, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–11409 Filed 6–1–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0277]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection #1121–0277: OJJDP National Training and Technical Assistance Center (NTTAC) Feedback Form Package

AGENCY: Office for Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on March 28, 2017 allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional days until July 3, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Linda Rosen, Training and Technical Assistance Specialist at 1–202–353–9222, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20530 or by email at *Linda.Rosen@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officers, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* OJJDP NTTAC Feedback Form Package.

(3) *The agency form number:* OJJDP NTTAC, all forms included in package #1121–0277.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local, or Tribal.

Other: Federal Government, Individuals or households; Not-for-profit institutions; Businesses or other for-profit.

Abstract: The Office for Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center (NTTAC) Feedback Form Package is designed to collect in-person and online data necessary to continuously assess the outcomes of the assistance provided for both monitoring and accountability purposes and for continuously assessing and meeting the needs of the field. OJJDP NTTAC will send these forms to technical assistance (TA) recipients; conference attendees; training and TA providers; online meeting participants; in-person meeting participants; and focus group participants to capture important feedback on the recipients' satisfaction with the quality, efficiency, referrals, information and resources provided and assess the recipients' additional training and TA needs. The data will then be used to advise NTTAC on ways to improve the support provided to its users; the juvenile justice field at-large; and ultimately improve services and outcomes for youth.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,140 respondents will complete forms and the response time will range from .03 hours to 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 470.83 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 30, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–11410 Filed 6–1–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Price Index Commodities and Services Survey

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Consumer Price Index Commodities and Services Survey,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 3, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201703-1220-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by

telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Consumer Price Index Commodities and Services Survey. The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. Each month, BLS data collectors (economic assistants) visit or call thousands of retail stores, service establishments, rental units, and doctors' offices, all over the United States to obtain information on the prices of the thousands of items used to track and measure price changes in the CPI. The collection of price data from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the CPI. The CPI is then widely used as a measure of inflation, indicator of the effectiveness of government economic policy, deflator for other economic series, and as a means of adjusting dollar values. This information collection has been classified as a revision, because the BLS will introduce a new geographic area sample for the CPI in January 2018. The new sample consists of 75 urban areas, while the current sample consists of 87 urban areas. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 1, 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0039. The current approval is scheduled to expire on July 31, 2017; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 3, 2017 (82 FR 12471).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Consumer Price Index Commodities and Services Survey.

OMB Control Number: 1220–0039.

Affected Public: State, Local, and Tribal Governments; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 47,095.

Total Estimated Number of Responses: 323,511.

Total Estimated Annual Time Burden: 114,492 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 26, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–11432 Filed 6–1–17; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0008]

California State Plan; New Operational Status Agreement

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This document announces a new Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the California State Plan, which specifies the respective areas of federal and state authority, and which clarifies California's coverage over maritime employment and OSHA's coverage over private employers on military installations and federal parks, and under which OSHA gains coverage over private and tribal employers on U.S. Government-recognized Native American reservations and trust lands.

DATES: Effective June 2, 2017.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Francis Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION: The California State Plan (Cal/OSHA) administers an OSHA-approved State Plan to develop and enforce occupational safety and health standards for private-sector and state and local government employers pursuant to the provisions of section 18 of the Occupational Safety and Health

Act (the Act), 29 U.S.C. 667. The California State Plan received initial federal OSHA plan approval on May 1, 1973 (38 FR 10719) and the Division of Occupational Safety and Health of the California Department of Industrial Relations is designated as the state agency responsible for administering the State Plan. On October 3, 1989, an Operational Status Agreement was entered into between OSHA and Cal/OSHA whereby concurrent federal enforcement authority was suspended with regard to federal occupational safety and health standards in issues covered by the State Plan. Federal OSHA retained its authority over occupational safety and health with regard to federal government employers and employees, and employees of the U.S. Postal Service (effective June 9, 2000). OSHA also retained its authority over private-sector maritime employment on the navigable waters of the United States; private-sector contractors on federal installations; whistleblower complaints under Section 11(c) of the Act; emergency temporary standards; and employers manufacturing explosives for the U.S. Department of Defense. Notice of this OSA was published in the **Federal Register** on July 12, 1990 (55 FR 28613), and there were subsequent minor amendments to the OSA. That 1990 **Federal Register** Notice contained a full history of the California State Plan.

Notice of New Operational Status Agreement

OSHA and Cal/OSHA signed a new OSA on April 30, 2014, which replaced the prior 1989 OSA. This new OSA clarified that concurrent federal enforcement authority would not be initiated with regard to any federal occupational safety and health standards in issues covered by the State Plan. Under the 2014 OSA, Federal OSHA retained coverage over all Federal employees and sites (including the United States Postal Service (USPS), USPS contract employees, and contractor-operated facilities engaged in USPS mail operations). The OSA also clarified that federal OSHA has enforcement authority over private-sector employers within the borders of all military installations and within U.S. National Parks, National Monuments, National Memorials, and National Recreational Areas in California. Further, OSHA gained enforcement authority over private-sector and tribal employers within U.S. Government-recognized Native American reservations and trust lands. Under the 2014 OSA, Federal OSHA retained authority over maritime employment (except marine construction on bridges and on shore) on the navigable waters of the United States and over whistleblower complaints under Section 11(c) of the Act. The 2014 OSA also did not contain the language from the 1989 OSA about specific elements of the Cal/OSHA program that had achieved operational status.

Federal OSHA and Cal/OSHA will exercise their respective enforcement authority according to the terms of the 2014 OSA between OSHA and Cal/OSHA. All terms of the 2014 OSA remain in effect. Additional information about this OSA is available at *https://www.osha.gov/dcsp/osp/stateprogs/california.html.*

Authority and Signature

Dorothy Dougherty, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1–2012 (76 FR 3912), and 29 CFR part 1902 and 1953

Signed in Washington, DC, on May 25, 2017.

Dorothy Dougherty,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–11422 Filed 6–1–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–031)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to NASA Paperwork Reduction Act Clearance Officer, Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001 or *Frances.C.Teel@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, or *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's Ames Research Center, Human Systems Integration Division manages the NASA Aviation Safety Reporting System (ASRS) under an Interagency Agreement with the Federal Aviation Administration (FAA).

The Aviation Safety Reporting System (ASRS) is an open, voluntary reporting system for any person in National Airspace System to report safety incidents, events, or situations. Respondents include but are not limited to commercial and general aviation pilots, air traffic controllers, flight attendants, maintenance technicians, dispatchers, and other members of the public. The ASRS database is a public repository which serves the FAA, NASA, and other organizations world-wide which are engaged in research and the promotion of safe flight. ASRS data are used to (1) Identify deficiencies and discrepancies in the National Aviation System (NAS) so that these can be remedied by appropriate authorities, (2) Support policy formulation and planning for, and improvements to, the NAS, and, (3) Strengthen the foundation of aviation human factors safety research. Respondents are not reimbursed for associated cost to provide the information. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Method of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail or fax.

III. Data

Title: NASA Aviation Safety Reporting System.

OMB Number: 2700–XXXX.

Type of Review: Existing Information Collection in use without OMB Approval.

Affected Public: Individuals.

Estimated Number of Respondents: 92,228.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 46,114 hours.

Estimated Total Annual Cost: $3.0M.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collection has practical utility; (2) the accuracy of NSA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2017–11423 Filed 6–1–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on arts participation in the U.S.: *Clearance Request for NEA 2018–2019 Annual Arts Basic Survey.* Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov.*

DATES: Comments should be sent by July 3, 2017.

ADDRESSES: You may send comments concerning this Notice to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, 202/395–7316.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: 2018–2019 Annual Arts Basic Survey.

OMB Number: New.

Frequency: Annually, in years the Survey of Public Participation in the Arts is not conducted.

Affected Public: American adults.

Estimated Number of Respondents: 36,000.

Estimated time per respondent: 4.0 minutes.

Total burden hours: 2,000 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This request is for clearance of the 2018 and 2019 Annual Arts Basic Surveys (AABS). These surveys will be conducted by the U.S. Census Bureau as a supplement to the Bureau of Labor Statistic's Current Population Survey. The AABS will be conducted in February 2018 and February 2019 and are expected to conducted annually thereafter in years that the National Endowment for the Arts' (NEA) Survey of Public Participation in the Arts (SPPA) is not conducted. One of the strengths of the AABS surveys is that they will both complement and supplement the information collected in the SPPA. The SPPA is the field's premiere repeated cross-sectional survey of individual attendance and involvement in arts and cultural activity, and is conducted approximately every five years. The AABS questionnaires are much shorter than the SPPA, consisting of 12 to 14 questions that will be used to track arts participation over time. As with the SPPA, the AABS data will be circulated to interested researchers and will be the basis for a range of NEA reports and independent research publications. Reports on these data will be made publicly available on the NEA's Web site. The AABS will provide annual primary knowledge on the extent and nature of participation in the arts in the United States. These data will also be used by the NEA as a contextual measure for one of the strategic goals identified in its FY 2014–FY 2018 strategic plan.

Dated: May 30, 2017.

Kathy Daum,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2017–11405 Filed 6–1–17; 8:45 am]

BILLING CODE 7537–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Multi-State Plan Program External Review Case Intake Form, OPM Form 1840

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revision of a currently approved collection, the Multi-State Plan Program External Review Intake Form, OPM Form 1840. This approval is necessary to improve the collection of information from members of the Multi-State Plan Program who need to request the external review of a disputed adverse benefit decision.

DATES: Comments will be accepted until July 3, 2017.

ADDRESSES: Send or deliver comments to: *Donna Lease Batdorf, Multi-State Plan Program, National Healthcare Operations, Healthcare and Insurance,* Office of Personnel Management, 1900 E Street NW., Room 3468, Washington, DC 20415; and Charlie Cutshaw, OPM

Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For copies of this proposal, contact C.C. ''Corky'' Conyers, Ph.D., *C.I.O. P.R.A./ Forms Officer* at (202) 606–0125, or via email to *Charles.Conyers@opm.gov.* Please include a mailing address with your request.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The previous collection (OMB No. 3206–0263) was published in the **Federal Register** on November 26, 2013 at 78 FR 70598. Approximately 800 respondents will complete the Multi-State Plan Program External Review Intake Form, OPM Form 1840 on a yearly basis. We estimate it will take 60 minutes to complete the OPM Form 1840. The annual estimated burden is 800 hours.

Comments are particularly invited on:

1. Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

2. Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

3. Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

Analysis

Agency: Multi-State Plan Program, National Healthcare Operations, Healthcare and Insurance, Office of Personnel Management.

Title: External Review Intake Form.

OMB: 3206–0263.

Frequency

Affected Public: Individuals or Households.

Number of Respondents: 800.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 800 hours.

Kathleen M. McGettigan,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. 2017–11438 Filed 6–1–17; 8:45 am]

BILLING CODE 6325–64–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Report of Matching Program: RRB and State Medicare/Medicaid Agencies (Renewal)

AGENCY: U.S. Railroad Retirement Board (RRB).

ACTION: Notice of a renewal of an existing computer matching program that expired on January 1, 2016.

SUMMARY: As required by the *Privacy Act of 1974,* as amended, the RRB is issuing a public notice in the **Federal Register** of its intent to renew an ongoing computer matching program. In this match, we provide certain Medicare and benefit rate information to state agencies allowing them to review and if necessary, adjust amounts of benefits in their public assistance programs as well as to coordinate Medicare/Medicaid payments for public assistance recipients.

The purpose of this notice is to advise individuals receiving benefits under the Railroad Retirement Act that the RRB plans to share this computer matching data with state agencies.

DATES: Submit comments on or before July 12, 2017, at which time matching activities may continue. Agreements with the individual states will run for a maximum length of 18 months with a provision for an automatic, one-time 12 month renewal, for a maximum length of 30 months (5 U.S.C. 552a(o)(2)(D). In order to qualify for the renewal, both parties must certify to the RRB Data Integrity Board, three months prior to the expiration of the agreement that:

(1) The program will continue to be conducted without change, and

(2) Each party certifies to the board in writing that the program has been conducted in compliance with the agreement.

The number of matches conducted with each state during the period of the match will vary from state to state, but typically are 2 to 4 matches per calendar year.

ADDRESSES: Address any comments concerning this notice to Ms. Martha P. Rico, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy S. Grant, Chief Privacy Officer, Railroad Retirement Board, 844 North Rush Street Chicago, Illinois 60611–2092, *tim.grant@rrb.gov.*

SUPPLEMENTARY INFORMATION:

A. General

The *Privacy Act of 1974* (5 U.S.C. 552a), as amended, regulates Federal agencies when they conduct computer matching activities in a system of records with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish reports about matching programs to Congress and Office of Management and Budget;

(5) Notify beneficiaries and applicants that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. RRB Computer Matches Subject to the Privacy Act

We have taken action to ensure that our computer matching programs comply with the requirements of the *Privacy Act of 1974,* as amended.

C. Notice of Computer Matching Program: RRB with State Medicare Agencies (Renewal):

Name of Participating Agencies: The Railroad Retirement Board and state public aid/public assistance agencies.

Authority for Conducting the Match: 20 CFR 200.5(j)(1), 20 CFR 200.8(g)(10), 42 CFR 435.940 through 435.965.

Purpose of the Match: The match has several purposes allowing state agencies to:

(1) Accurately identify qualified Railroad Retirement Beneficiaries;

(2) Make necessary adjustments required under state law in public aid payments due to cost of living or other adjustments in RRB annuities;

(3) Coordinate benefits of dually eligible Medicare and Medicaid beneficiaries; and

(4) To identify individuals who are eligible for Part B Medicare and not enrolled in order to enroll such individuals in the State Buy-In program.

Categories of Individuals: All beneficiaries under the Railroad Retirement Act who have been identified by a state as a recipient of public aid will have information about their RRB benefits and Medicare enrollment furnished to the requesting state agency.

Categories of Records: The state agency will provide the RRB with a file of records. The data elements in the

records will consist of beneficiary identifying information such as: Name, Social Security Number (SSN), date of birth, and RRB Claim Number, if known. The RRB will then conduct a computer match on the state provided identifying information.

If the matching operation reveals that an individual who received benefits under the Railroad Retirement Act also received benefits from the state for any days in the period, the RRB will notify the state agency and provide benefit payment and Medicare Entitlement data for those matched individuals. The state agency will then make adjustments, as necessary by law or regulation for those matched records.

Systems of Records: This information is covered as a routine disclosure under the Privacy Act system of records RRB–20, *Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE),* or RRB–21, *Railroad Unemployment and Sickness Insurance Benefit System,* which were published in the **Federal Register** on: RRB–20, September 30, 2014 (79 FR 58886), and RRB–21 on May 15, 2015 (80 FR 28016). You can also find all RRB Privacy Act Systems of Records notices on our public Web site at: (*http://www.rrb.gov/bis/privacy_act/SORNList.asp*).

Other information: The notice we are giving here is in addition to any individual notice.

We will furnish a copy of this notice to both Houses of Congress and the Office of Management and Budget.

Dated: May 25, 2017.

By Authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2017–11414 Filed 6–1–17; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80799; File No. SR–NYSE–2017–23]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 26, 2017.

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 May 22, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete the Order Audit Trail System (''OATS'') rules in the Rule 7400 Series and amend Rule 8211 governing submission of Electronic Blue Sheet trading data (''EBS'') as these Rules provide for the collection of information that is duplicative of the data collection requirements of the CAT once the Financial Industry Regulatory Authority (''FINRA'') publishes a notice announcing the date that it will retire its OATS and EBS rules. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., FINRA, Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[3] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, the Exchange, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[4] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[5] and Rule 608 of Regulation NMS thereunder,[6] the CAT NMS Plan.[7] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[8] The Plan was published for comment in the **Federal Register** on May 17, 2016,[9] and approved by the Commission, as modified, on November 15, 2016.[10] On March 21, 2017, the Commission approved[11] the Exchange's new Rule 6800 Series to implement provisions of the CAT NMS Plan that are applicable to Exchange member organizations.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR–ISEGemini–2017–13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR–ISEMercury–2017–05); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR–ISE–2017–25).

[4] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16).

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[8] 17 CFR 242.613.

[9] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4–698).

[10] Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (November 23, 2016) (File No. 4–698) (''Approval Order'').

[11] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–NYSE–2017–01) (Order Approving Proposed Rule Changes to Adopt Consolidated Audit Trail Compliance Rules).

[12] The Rule 6800 Series utilizes the term ''Industry Member,'' which applies to the Exchange's member organizations. The term ''member organization'' means a ''registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.'' *See* Rule 2(b)(i). The term ''member organization'' also includes any registered broker or dealer that is

Continued

The Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.[13] In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.'' [14] The Plan notes that ''the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.'' [15]

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS and EBS rules is intended to be collected by CAT. Therefore, the Exchange believes that the Rule 7400 Series will no longer be necessary once FINRA publishes notice announcing the date it will retire its OATS rules. Similarly, the Exchange believes that it will be necessary to clarify how the Exchange will request EBS data under Rule 8211 after members are reporting to the CAT. Accordingly, the Exchange proposes to amend Rule 8211 to add new Supplementary Material clarifying how the Exchange will request data under these rules after member organizations are reporting to the CAT once FINRA publishes notice announcing the date it will retire its OATS rules. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules.

If the Commission approves the proposed rule change, the rule text will be effective; however, the amendments will not be implemented until FINRA publishes a notice announcing the date that it will retire its OATS rules, at which time the Exchange will publish a regulatory notice announcing implementation date of the proposed rule change. As discussed below, FINRA will publish its notice once the CAT achieves certain specific accuracy and reliability standards and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations,[16] and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Duplicative OATS Requirements

The Rule 7400 Series consists of Rules 7410 through 7470 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules require all Exchange member organizations and associated persons to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,[17] traded on the Exchange, including NYSE-listed securities. This information is used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws. The Exchange has determined that the requirements of the Rule 7400 Series are duplicative of information available in the CAT and thus will no longer be necessary once the CAT is operational.

The Participants have provided OATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary OATS data elements in the CAT Technical Specifications. Accordingly, the Exchange proposes to eliminate its OATS Rules in accordance with the proposed timeline discussed below.

Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[18] As discussed in more detail in its rule filing, FINRA believes that OATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.[19]

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [20] FINRA believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. As discussed in FINRA's filing, FINRA believes that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS and therefore supports an amendment to the Plan that would require current OATS Reporters that are ''Small Industry Members'' to report two years after the Effective Date (instead of three).[21]

The CAT NMS Plan also requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT

a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate. *See* Rule 2(b)(ii).

[13] Appendix C of CAT NMS Plan, Approval Order at 85010.

[14] *Id.*

[15] *Id.*

[16] As noted in the Participants' September 23, 2016 response to comment letters on the Plan, the Participants ''worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.'' Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they ''will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' *Id.*

[17] 17 CFR 242.600(B)(47).

[18] Appendix C of CAT NMS Plan, Approval Order at 85010.

[19] *See* SR–FINRA–2017–013.

[20] *Id.* [sic].

[21] *See* SR–FINRA–2017–013. FINRA has represented that it intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

would facilitate such Individual Industry Member exemptions.'' [22]

FINRA believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. FINRA believes that that the overall accuracy and reliability thresholds for the CAT described above [sic] would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above [sic], FINRA supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.[23]

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [24] As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (*i.e.,* data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that ''error rates after reprocessing of error corrections will be de minimis.'' [25] The Participants based this Error Rate on their consideration of ''current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.'' [26]

As set forth in its filing, FINRA believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by FINRA to conduct surveillance. To ensure the CAT's accuracy and reliability, FINRA is thus proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).[27] FINRA is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.[28] Consequently, FINRA is proposing to use error rates in four categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met.[29]

In addition to these minimum error rates before OATS can be retired FINRA believes that during the minimum 180-day period during which the thresholds are calculated, FINRA's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The Exchange believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.[30]

Rule 8211

In addition to the OATS rules, Rule 8211 will also be affected by the implementation of the CAT. Rule 8211 is the Exchange's rule regarding the automated submission of specific trading data to the Exchange upon request (commonly referred to as ''blue sheet'' data) using the EBS system.

Once broker-dealer reporting to the CAT has begun, the CAT will contain much of the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, the Exchange will not need to use the EBS system or request information pursuant to Rule 8211 for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, Rule 8211 cannot be completely eliminated upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to Rule 8211 for trading activity occurring before a member organization [31] was reporting to the CAT.[32] In addition, the Rule 8211 applies to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, the rule must remain in effect with respect to those transactions until those transactions are captured in the CAT.

The proposed rule change proposes to add new Supplementary Material to the Rule 8211 to clarify how the Exchange will request data under these rules after member organizations are reporting to the CAT. Specifically, the proposed Supplementary Material to the Rule 8211 will note that the Exchange will

[22] *Id.* [sic].

[23] *Id.*

[24] *Id.* [sic].

[25] *See* CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

[26] *Id.*

[27] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, Appendix C, Section A.2(a).

[28] *See* SR–FINRA–2017–013.

[29] The categories are (1) rejection rates and data validations; (2) intra-firm linkages; (3) order linkage rates; and (4) Exchange and TRF/ORF match rates.

[30] *See* SR–FINRA–2017–013.

[31] The Rule 6800 Series, the Exchange's Consolidated Audit Trail Compliance rule, utilizes the term ''Industry Member,'' which applies to the Exchange's member organizations. The term ''member organization'' means a ''registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.'' *See* Rule 2(b)(i). The term ''member organization'' also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate. *See* Rule 2(b)(ii).

[32] Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. *See* 17 CFR 240.17a–3(a), 240.17a–4.

request information under Rule 8211 only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

However, as noted above, FINRA believes that the CAT must meet certain minimum accuracy and reliability standards before FINRA could rely on the CAT Data to replace existing regulatory tools, including EBS. Consequently, the proposed Supplementary Material will be implemented only after FINRA publishes its notice after the CAT achieves the thresholds set forth above with respect to OATS and an accuracy rate for customer and account information of 95% for pre-corrected data and 98% for post-correction data. In addition, as discussed above, FINRA can rely on CAT Data to replace EBS requests only after FINRA has determined that its usage of the CAT Data over a 180-day period has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and confirmed that the CAT Plan Processor is fulfilling its obligations under the CAT NMS Plan.

As noted, if the Commission approves the proposed rule change, the Exchange will announce the implementation date of the proposed rule change in a regulatory notice that will be published once FINRA publishes a notice announcing the date that it will retire its EBS rules, which FINRA will do once it concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[33] in general, and furthers the objectives of Section 6(b)(5) of the Act,[34] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed rule change implements, supports, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Members in meeting regulatory obligations pursuant to, and milestones established by, the Plan. In approving the Plan, the SEC noted that it ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [35] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange also believes that adding a preamble to each current Rule impacted by the Plan would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules, reducing potential confusion, and making the Exchange's rules easier to navigate and understand.

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 change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–23 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–2017–23. 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

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] Approval Order, 81 FR at 84697.

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–23, and should be submitted on or before June 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11400 Filed 6–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80800; File No. SR–NYSEArca–2017–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 26, 2017.

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 May 15, 2017, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete NYSE Arca Rule 6.20 (Time Synchronization) and subsections (a)(1)–(13) of NYSE Arca Rule 6.68 (Record of Orders) as these Rules collect information for the consolidated options audit trail system (''COATS'') that are duplicative of the data collection requirements of the CAT NMS Plan. The Exchange will announce the date for the retirement of COATS in a regulatory notice that will be published once the options exchanges determine that the thresholds for accuracy and reliability described below have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The proposed 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, CBOE, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[3] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, the Exchange, NYSE Arca, Inc. and NYSE National, Inc.[4] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[5] and Rule 608 of Regulation NMS thereunder,[6] the CAT NMS Plan.[7] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[8] The Plan was published for comment in the **Federal Register** on May 17, 2016,[9] and approved by the Commission, as modified, on November 15, 2016.[10]

The Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.[11] In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.''[12] The Plan notes that ''the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.''[13]

After conducting its analysis of its rules in accordance with the CAT NMS Plan, the Exchange determined that the information collected for COATS is intended to be collected by the CAT. Therefore, the Exchange believes that COATS will no longer be necessary once the CAT is operational and certain accuracy and reliability standards are met. Accordingly, the Exchange submits this proposed rule change to delete NYSE Arca Rule 6.20 and subsections (a)(1)–(13) of NYSE Arca Rule 6.68, which set forth certain requirements related to COATS. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rule.

If the Commission approves the proposed rule change, the rule text will be effective; however, the amendments will not be implemented until the

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR–ISEGemini–2017–13); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017) (SR–ISEMercury–2017–05); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR–ISE–2017–25).

[4] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16).

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[8] 17 CFR 242.613.

[9] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4–698).

[10] Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (November 23, 2016) (File No. 4–698) (''Approval Order'').

[11] Appendix C of CAT NMS Plan, Approval Order at 85010.

[12] *Id.*

[13] *Id.*

Exchange, in conjunction with the other options exchanges, publishes a notice announcing the date for the retirement of COATS. As noted below, such a notice would be published once the options exchanges determine that the thresholds for accuracy and reliability described below have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Duplicative COATS Requirements

COATS was developed to comply with an order of the Commission requiring the Exchange, in coordination with other exchanges, to ''design and implement'' COATS to ''enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.'' [14] The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions.

The Exchange has determined that the requirements of NYSE Arca Rule 6.20 and subsections (a)(1)–(13) of NYSE Arca Rule 6.68, which implement certain requirements related to COATS, are duplicative of information available in the CAT and thus will no longer be necessary once the CAT is operational.[15]

The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, the Exchange and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[16] As discussed below, the Exchange and the other options exchanges believe that COATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and the Exchange has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, the Exchange will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [17] The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [18]

The Exchange believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS requirements on a firm-by-firm basis. The Exchange and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, the Exchange and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources. The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [19] The Exchange believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, the Exchange

[14] *See* Section IV.B.e.(v) of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the ''Order''). *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282. As noted, the Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Exchange has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–NYSEMKT–2017–02) (Order Approving Proposed Rule Changes to Adopt Consolidated Audit Trail Compliance Rules). Once the CAT is fully operational, it will be appropriate to delete Exchange rules implemented to comply with the Order as duplicative of the CAT. Accordingly, the Exchange believes that the Exchange would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

[15] NYSE Arca Rule 6.20 requires OTP Holders and OTP Firms to synchronize, within a time frame established by the Exchange, the business clocks used for recording the date and time of any event that must be recorded pursuant to the Exchange Rules. Under the Rule, OTP Holders and OTP Firms may use any time provider source, but must ensure that its business clocks are accurate to within a three-second of the National Institute of Standards and Technology Atomic Clock in Boulder, Colorado or the United States Naval Observatory Master Clock in Washington, DC. The Exchange has determined that NYSE Arca Rule 6.20 is duplicative of CAT requirements and thus will no longer be necessary once the CAT is operational.

NYSE Arca Rule 6.68 requires OTP Holders and OTP Firms to maintain and preserve a record of every order and of any other instructions given or received for the purchase or sale of options contracts, including the terms and conditions of the orders (such as whether the order is a market or limit order), the order entry date and time, and the date and time of any modification of the terms of the order or cancellation of the order, or other specific data elements.

[16] *See* Appendix C of CAT NMS Plan, Approval Order at 85010.

[17] *Id.*

[18] *Id.*

[19] *Id.*

believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

The Exchange and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[20] The Exchange proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. The Exchange believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. The Exchange proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, the Exchange proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for FINRA's Order Audit Trail System (''OATS'').

In addition to these minimum error rates before COATS can be retired, the Exchange believes that during the minimum 180-day period during which the thresholds are calculated, the Exchange's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow the Exchange to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. The Exchange believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed rule change is consistent with the Exchange Act because it fulfills the obligation in the CAT NMS Plan for the Exchange to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [23] As this proposal implements the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the Exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for the Exchange and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, the Exchange believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that the Exchange is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

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 change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all options exchanges are proposing the elimination of COATS and their rules related to COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the options exchanges and/or their members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–57 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–2017–57. This file number should be included on the

[20] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] Approval Order at 84697.

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–NYSEArca–2017–57, and should be submitted on or before June 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11401 Filed 6–1–17; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80812; File No. SR–FICC–2017–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Implement the Capped Contingency Liquidity Facility in the Government Securities Division Rulebook

May 30, 2017.

I. Introduction

On March 1, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2017–002 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to implement a Capped Contingency Liquidity Facility in FICC's Government Securities Division Rulebook.[3] The Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2017.[4] To date, the Commission has received three comment letters to the Proposed Rule Change.[5] On April 25, 2017, the Commission designated a longer period within which to approve the Proposed Rule Change, disapprove the Proposed Rule Change, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the Proposed Rule Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FICC also filed the Proposed Rule Change as advance notice SR–FICC–2017–802 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on March 15, 2017. Securities Exchange Act Release No. 80191 (March 9, 2017), 82 FR 13876 (March 15, 2017) (SR–FICC–2017–802). The Commission extended the deadline for its review period of the Advance Notice from April 30, 2017 to June 29, 2017. Securities Exchange Act Release No. 80520 (April 25, 2017), 82 FR 20404 (May 1, 2017) (SR–FICC–2017–802). The proposal in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Securities Exchange Act Release No. 80234 (March 14, 2017), 82 FR 14401 (March 20, 2017) (SR–FICC–2017–002).

[5] *See* letter from Robert E. Pooler, Chief Financial Officer, Ronin Capital LLC, dated April 10, 2017, to Robert W. Errett, Deputy Secretary, Commission; letter from Alan B. Levy, Managing Director, Industrial and Commercial Bank of China Financial Services LLC (''ICBC''), Philip Vandermause, Director, Aardvark Securities LLC, David Rutter, Chief Executive Officer, LiquidityEdge LLC, Robert Pooler, Chief Financial Officer, Ronin Capital LLC, Jason Manumaleuna, Chief Financial Officer and EVP, Rosenthal Collins Group LLC, and Scott Skyrm, Managing Director, Wedbush Securities Inc. (''ICBC Letter''); and letter from Timothy J. Cuddihy, Managing Director, FICC, dated March 8, 2017, to Robert W. Errett, Deputy Secretary, Commission (''FICC Letter''), *available at https://www.sec.gov/comments/sr-ficc-2017-002/ficc2017002.htm.* Since the proposal contained in the Proposed Rule Change was also filed as an Advance Notice, Release No. 80191, *supra* note 3, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the Proposed Rule Change or the Advance Notice.

[6] *See* Securities Exchange Act Release No. 80524 (April 25, 2017), 82 FR 20685 (May 3, 2017).

[7] 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change

FICC's current liquidity resources for its Government Securities Division (''GSD'')[8] consist of (i) cash in GSD's clearing fund; (ii) cash that can be obtained by entering into uncommitted repo transactions using securities in the clearing fund; (iii) cash that can be obtained by entering into uncommitted repo transactions using the securities that were destined for delivery to the defaulting GSD member; and (iv) uncommitted bank loans.[9]

With this Proposed Rule Change, FICC proposes to amend its GSD Rulebook (''GSD Rules'')[10] to establish a rules-based, committed liquidity resource (*i.e.,* the Capped Contingency Liquidity Facility® (''CCLF'')) as an additional liquidity resource designed to provide FICC with a committed liquidity resource to meet its cash settlement obligations in the event of a default of the GSD Netting Member or family of affiliated Netting Members (''Affiliated Family'') to which FICC has the largest exposure in extreme but plausible market conditions.[11]

A. Overview of the Proposal

CCLF would be invoked only if FICC declared a ''CCLF Event,'' which would occur only if FICC ceased to act for a Netting Member in accordance to GSD Rule 22A (referred to as a ''default'') and, subsequent to such default, FICC determined that its other, above-described liquidity resources could not generate sufficient cash to statisfy FICC's payment obligations to the non-defaulting Netting Members. Once FICC declares a CCLF Event, each Netting Member could be called upon to enter into repurchase transactions with FICC (''CCLF Transactions'') up to a pre-determined capped dollar amount, as described below.

1. Declaration of a CCLF Event

Following a default, FICC would first obtain liquidity through its other available non-CCLF liquidity resources.

[8] FICC operates two divisions—GSD and the Mortgage-Backed Securities Division (''MBSD''). GSD provides trade comparison, netting, risk management, settlement and central counterparty services for the U.S. government securities market, while MBSD provides the same services for the U.S. mortgage-backed securities market. Because GSD and MBSD are separate divisions of FICC, each division maintains its own rules, members, margin from their respective members, clearing fund, and liquid resources.

[9] *See* Notice, 82 at 14402.

[10] GSD Rules, *available at www.dtcc.com/legal/rules-and-procedures.aspx.*

[11] As defined in the GSD Rules, the term ''Netting Member'' means a GSD member that is a member of the GSD Comparison System and the Netting System. *Id.*

If FICC determined that these sources of liquidity would be insufficient to meet FICC's payment obligation to its non-defaulting Netting Members, FICC would declare a CCLF Event. FICC would notify all Netting Members of FICC's need to make such a declaration and enter into CCLF Transactions, as necessary, by issuing an Important Notice.

2. CCLF Transactions

Upon declaring a CCLF Event, FICC would meet its liquidity need by initiating CCLF Transactions with non-defaulting Netting Members. The Proposed Rule Change would clarify that the original transaction that created FICC's initial obligation to pay cash to the now Direct Affected Member, and the Direct Affected Member's initial obligation to deliver securities to FICC, would be deemed satisfied by entry into the CCLF Transaction, and that such settlement would be final.

Each CCLF Transaction would be governed by the terms of the September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement,[12] which would be incorporated by reference into the GSD Rules as a master repurchase agreement between FICC as seller and each Netting Member as buyer, with certain modifications as outlined in the GSD Rules (''CCLF MRA'').

To initiate CCLF Transactions with non-defaulting Netting Members, FICC would identify the non-defaulting Netting Members that are obligated to deliver securities destined for the defaulting Netting Member (''Direct Affected Members'') and, in return, would be obligated to receive a cash payment. FICC would need to finance those transactions through CCLF, in order to cover the defaulting Netting Member's failure to deliver the cash payment (''Financing Amount''). FICC would notify each Direct Affected Member of the Direct Affected Member's Financing Amount and whether such Direct Affected Member should deliver to FICC or suppress any securities that were destined for the defaulting Netting Member. FICC would then initiate CCLF Transactions with each Direct Affected Member for the Direct Affected Member's purchase of the securities (''Financed Securities'') that were destined for the defaulting Netting Member.[13] The aggregate purchase price of the CCLF Transactions with the Direct Affected Member could equal but never exceed the Direct Affected Member's maximum funding obligation (''Individual Total Amount'').[14]

If any Direct Affected Member's Financing Amount exceeds its Individual Total Amount (''Remaining Financing Amount''), FICC would advise the following categories of Netting Members (collectively, ''Affected members'') that FICC intends to initiate CCLF Transactions with them for the Remaining Financing Amount: (i) All other Direct Affected Members with a Financing Amount less than its Individual Total Amount; and (ii) each Netting Member that has not otherwise entered into CCLF Transactions with FICC (''Indirect Affected Members'').

FICC states that the order in which FICC would enter into CCLF Transactions for the Remaining Financing Amount would be based upon the Affected Members that have the most funding available within their Individual Total Amounts.[15] No Affected Member would be obligated to enter into CCLF Transactions greater than its Individual Total Amount.

After receiving approval from FICC's Board of Directors to do so, FICC would engage its investment advisor during a CCLF Event to minimize liquidation losses on the Financed Securities through hedging, strategic dispositions, or other investment transactions as determined by FICC under relevant market conditions. Once FICC liquidates the underlying securities by selling them to a new buyer (''Liquidating Trade''), FICC would instruct the Affected Member to close the CCLF Transaction by delivering the Financed Securities to FICC in order to complete settlement of the Liquidating Trade. FICC would attempt to unwind the CCLF Transactions in the order it entered into the Liquidating Trades. Each CCLF Transaction would remain open until the earlier of (i) such time that FICC liquidates the Affected Member's Financed Securities; (ii) such time that FICC obtains liquidity through its available liquid resources; or (iii) 30 or 60 calendar days after entry into the CCLF Transaction for U.S. government bonds and mortgage-backed securities, respectively.

B. CCLF Sizing and Allocation

According to FICC, its overall liquidity need during a CCLF Event would be determined by the cash settlement obligations presented by the default of a Netting Member and its Affiliated Family, as described below. An additional amount (''Liquidity Buffer'') would be added to account for both changes in Netting Members' cash settlement obligations that may not be observed during the six-month look-back period during which CCLF would be sized, and the possibility that the defaulting Netting Member is the largest CCLF contributor.

FICC believes that its proposal would allocate FICC's observed liquidity need during a CCLF Event among all Netting Members based on their historical settlement activity, but states that Netting Members that present the highest cash settlement obligations would be required to maintain higher CCLF funding obligations.[16]

The steps that FICC would take to size its overall liquidity need during a CCLF event and then size and allocate each Netting Member's CCLF contribution requirement are described below.

Step 1: CCLF Sizing

(A) Historical Cover 1 Liquidity Requirement

FICC's historical liquidity need for the six-month look-back period would be equal to the largest liquidity need generated by an Affiliated Family during the preceding six-month period. The amount which would be determined by calculating the largest sum of an Affiliated Family's obligation to receive GSD eligible securities, plus the net dollar amount of its Funds-Only Settlement Amount[17] (collectively, the ''Historical Cover 1 Liquidity Requirement''). FICC believes that it is appropriate to calculate the Historical Cover 1 Liquidity Requirement in this manner because the default of such an

[12] The September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement (''SIFMA MRA'') is *available at http://www.sifma.org/services/standard-forms-and-documentation/mra,-gmra,-msla-and-msftas/*. The SIFMA MRA would be incorporated by reference into the GSD Rules without referenced annexes, other than Annex VII (Transactions Involving Registered Investment Companies), which would be applicable to any Netting Member that is a registered investment company. FICC represents that, at the time of filing the Proposed Rule Change, there were no registered investment companies that are also GSD Netting Members. *See* Notice, 82 at 14402.

[13] FICC states that it would have the authority to initiate CCLF Transactions with respect to any securities that are in the Direct Affected Member's portfolio which are bound to the defaulting Netting Member.

[14] The sizing of each Direct Affected Member's Individual Total Amount is described below in Section II.B.

[15] *See* Notice, 82 at 14403.

[16] *Id.*

[17] According to FICC, the Funds-Only Settlement Amount reflects the amount that FICC collects and passes to the contra-side once FICC marks the securities in a Netting Member's portfolio to the current market value. FICC states that this amount is the difference between the contract value and the current market value of a Netting Member's GSD portfolio. FICC states that it would consider this amount when calculating the Historical Cover 1 Liquidity Requirement because in the event that an Affiliated Family defaults, the Funds-Only Settlement Amount would also reflect the cash obligation to non-defaulting Netting Members. *Id.*

Affiliated Family would generate the largest liquidity need for FICC.[18]

(B) Liquidity Buffer

According to FICC, it is cognizant that the Historical Cover 1 Liquidity Requirement would not account for changes in a Netting Member's current trading behavior, which could result in a liquidity need greater than the Historical Cover 1 Liquidity Requirement. To account for this potential shortfall, FICC proposes to add a Liquidity Buffer as an additional amount to the Historical Cover 1 Liquidity Requirement, which would help to better anticipate GSD's total liquidity need during a CCLF Event.

FICC states that the Liquidity Buffer would initially be 20 percent of the Historical Cover 1 Liquidity Requirement (and between 20 to 30 percent thereafter), subject to a minimum amount of $15 billion.[19] FICC believes that 20 to 30 percent of the Historical Cover 1 Liquidity Requirement is appropriate based on its analysis and statistical measurement of the variance of its daily liquidity need throughout 2015 and 2016.[20] FICC also believes that the $15 billion minimum dollar amount is necessary to cover changes in a Netting Member's trading activity that could exceed the amount that is implied by such statistical measurement.[21]

FICC would have the discretion to adjust the Liquidity Buffer, within the range of 20 to 30 percent of the Historical Cover 1 Liquidity Requirement, based on its analysis of the stability of the Historical Cover 1 Liquidity Requirement over various time horizons. According to FICC, this would help ensure that its liquidity resources are sufficient under a wide range of potential market scenarios that may lead to a change in a Netting Member's trading behavior. FICC also states that it would analyze the trading behavior of Netting Members that present larger liquidity needs than the majority of the Netting Members, as described below.[22]

(C) Aggregate Total Amount

FICC's anticipated total liquidity need during a CCLF Event (*i.e.,* the sum of the Historical Cover 1 Liquidity Requirement plus the Liquidity Buffer) would be referred to as the ''Aggregate Total Amount.'' The Aggregate Total Amount initially would be set to the Historical Cover 1 Liquidity Requirement plus the greater of 20 percent of the Historical Cover 1 Liquidity Requirement or $15 billion.

Step 2: Allocation of the Aggregate Total Amount Among Netting Members

(A) Allocation of the Aggregate Regular Amount Among Netting Members

The Aggregate Total Amount would be allocated among Netting Members in order to arrive at each Netting Member's Individual Total Amount. FICC would take a tiered approach in its allocation of the Aggregate Total Amount. First, FICC would determine the portion of the Aggregate Total Amount that should be allocated among all Netting Members (''Aggregate Regular Amount''), which FICC states initially would be set at $15 billion.[23] FICC believes that this amount is appropriate because the average Netting Member's liquidity need from 2015 to 2016 was approximately $7 billion, with a majority of Netting Members having liquidity needs less than $15 billion.[24] Based on that analysis, FICC believes that the $15 billion Aggregate Regular Amount should capture the liquidity needs of a majority of the Netting Members.[25]

Second, as discussed in more detail below, after allocating the $15 billion Aggregate Regular Amount, FICC would allocate the remainder of the Aggregate Total Amount (''Aggregate Supplemental Amount'') among Netting Members that incurred liquidity needs above the Aggregate Regular Amount within the six-month look-back period. For example, a Netting Member with a $7 billion peak daily liquidity need would only contribute to the $15 billion Aggregate Regular Amount, based on the calculation described below. Meanwhile a Netting Member with a $45 billion Aggregate Regular Amount would contribute towards the $15 billion Aggregate Regular Amount and the Aggregate Supplemental Amount, as described below.

FICC believes that this tiered approach reflects a reasonable, fair, and transparent balance between FICC's need for sufficient liquidity resources and the burdens of the funding obligations on each Netting Member's management of its own liquidity.[26]

Under the proposal, the Aggregate Regular Amount would be allocated among all Netting Members, but Netting Members with larger Receive Obligations[27] would be required to contribute a larger amount. FICC believes that this approach is appropriate because a defaulting Netting Member's Receive Obligations are the primary cash settlement obligations that FICC would have to satisfy as a result of the default of an Affiliated Family.[28] However, FICC also believes that, because FICC guarantees both sides of a GSD Transaction and all Netting Members benefit from FICC's risk mitigation practices, some portion of the Aggregate Regular Amount should be allocated based on Netting Members' aggregate Deliver Obligations[29] as well.[30] As a result, FICC proposes to allocate the Aggregate Regular Amount based on a scaling factor. Given that the Aggregate Regular Amount would be initially sized at $15 billion and would cover approximately 80 percent of Netting Members' observed liquidity needs, FICC proposes to set the scaling factor in the range of 65 to 85 percent to the value of Netting Members' Receive Obligations, and in the range of 15 to 35 percent to the value of Netting Members' Deliver Obligations.[31]

FICC states that it would initially assign a 20 percent weighting

[18] *Id.*

[19] *See* Notice, 82 at 14404. For example, if the Historical Cover 1 Liquidity Requirement was $100 billion, the Liquidity Buffer initially would be $20 billion ($100 billion × 0.20), for a total of $120 billion in potential liquidity resources.

[20] According to FICC, it uses a statistical measurement called the ''coefficient of variation,'' which is calculated as the standard deviation divided by the mean, to quantify the variance of Affiliated Families' daily liquidity needs. *See* Notice, 82 at 14403. FICC states that this is a typical approach used to compare variability across different data sets. *Id.* FICC states that it will use the coefficient of variation to set the Liquidity Buffer by quantifying the variance of each Affiliated Family's daily liquidity need. *Id.* FICC believes that a Liquidity Buffer of 20 to 30 percent, subject to a minimum of $15 billion, would be an appropriate Liquidity Buffer because FICC found that, throughout 2015 and 2016, the coefficient of variation ranged from an average of 15 to 19 percent for Affiliated Families with liquidity needs above $50 billion, and an average of 18 to 21 percent for Affiliated Families with liquidity needs above $35 billion. *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] From 2015 to 2016, 59 percent of all Netting Members presented average liquidity needs between $0 to $5 billion, 78 percent of all Netting Members presented average liquidity needs between $0 and $10 billion, and 85 percent of all Netting Members presented average liquidity needs between $0 and $15 billion. *Id.*

[25] *Id.*

[26] *Id.*

[27] ''Receive Obligation'' means a Netting Member's obligation to receive eligible netting securities from FICC at the appropriate settlement value, either in satisfaction of all or a part of a Net Long Position, or to implement a collateral substitution in connection with a Repo Transaction with a right of substitution. GSD Rules, *supra* note 10.

[28] *See* Notice, 82 at 14404.

[29] ''Deliver Obligation'' means a Netting Member's obligation to deliver eligible netting securities to FICC at the appropriate settlement value either in satisfaction of all or a part of a Net Short Position or to implement a collateral substitution in connection with a Repo Transaction with a right of substitution. GSD Rules, *supra* note 10.

[30] *See* Notice, 82 at 14404.

[31] *See* Notice, 82 at 14404.

percentage to a Netting Member's aggregate peak Deliver Obligations (''Deliver Scaling Factor'') and the remaining percentage difference, 80 percent in this case, to a Netting Member's aggregate peak Receive Obligations (''Receive Scaling Factor'').[32] FICC would have the discretion to adjust these scaling factors based on a quarterly analysis that would, in part, assess Netting Members' observed liquidity needs that are at or below $15 billion. FICC believes that this assessment would help ensure that the Aggregate Regular Amount would be appropriately allocated across all Netting Members.[33]

(B) FICC's Allocation of the Aggregate Supplemental Amount Among Netting Members

The remainder of the Aggregate Total Amount (*i.e.,* the Aggregate Supplemental Amount) would be allocated among Netting Members that present liquidity needs greater than $15 billion using Liquidity Tiers. As described in greater detail in the Notice, the specific allocation of the Aggregate Supplemental Amount to each Liquidity Tier would be based on the frequency that Netting Members generated liquidity needs within each Liquidity Tier, relative to the other Liquidity Tiers.[34] More specifically, once the Aggregate Supplemental Amount is divided among the Liquidity Tiers, the amount within each Liquidity Tier would be allocated among the applicable Netting Members, based on the relative frequency that a Netting Member generated liquidity needs within each Liquidity Tier.[35] FICC explains that this allocation would result in a larger proportion of the Aggregate Supplemental Amount being borne by those Netting Members who present the highest liquidity needs.[36]

The sum of a Netting Member's allocation across all Liquidity Tiers would be such Netting Member's Individual Supplemental Amount. FICC would add each Netting Member's Individual Supplemental Amount (if any) to its Individual Regular Amount to arrive at such Netting Member's Individual Total Amount.

C. FICC's Ongoing Assessment of the Sufficiency of CCLF

As described above, the Aggregate Total Amount and each Netting Member's Individual Total Amount (*i.e.,* each Netting Member's allocation of the Aggregate Total Amount) would initially be calculated using a six-month look-back period that FICC would reset every six months (''reset period''). FICC states that, on a quarterly basis, FICC would assess the following parameters used to calculate the Aggregate Total Amount (and could consider changes to such parameters, if necessary and appropriate):

- The largest peak daily liquidity need of an Affiliated Family;
- the Liquidity Buffer;
- the Aggregate Regular Amount;
- the Aggregate Supplemental Amount;
- the Deliver Scaling Factor and the Receive Scaling Factor used to allocate the Aggregate Regular Amount;
- the increments for the Liquidity Tiers; and
- the length of the look-back period and the reset period for the Aggregate Total Amount.[37]

FICC represents that, in the event that any changes to the above-referenced parameters result in an increase in a Netting Member's Individual Total Amount, such increase would be effective as of the next bi-annual reset.[38]

Additionally, on a daily basis, FICC would examine the Aggregate Total Amount to ensure that it is sufficient to satisfy FICC's liquidity needs. If FICC determines that the Aggregate Total Amount is insufficient to satisfy its liquidity needs, FICC would have the discretion to change the length of the six-month look-back period, the reset period, or otherwise increase the Aggregate Total Amount.

Any increase in the Aggregate Total Amount resulting from FICC's quarterly assessments or FICC's daily monitoring would be subject to approval from FICC management, as described in the Notice.[39] Increases to a Netting Member's Individual Total Amount as a result of its daily monitoring would not be effective until ten business days after FICC issues an Important Notice regarding the increase. Reductions to the Aggregate Total Amount would be reflected at the conclusion of the reset period.

D. Implementation of the Proposed Changes and Required Attestation From Each Netting Member

The CCLF proposal would become operative 12 months after the later date of the Commission's approval of the Proposed Rule Change and the Commission's no objection to the related Advance Notice. FICC represents that, during this 12-month period, it would periodically provide each Netting Member with estimated Individual Total Amounts. FICC states that the delayed implementation and the estimated Individual Total Amounts are designed to give Netting Members the opportunity to assess the impact that the CCLF proposal would have on their business profile.[40]

FICC states that, as of the implementation date and annually thereafter, FICC would require that each Netting Member attest that it incorporated its Individual Total Amount into its liquidity plans.[41] This required attestation, which would be from an authorized officer of the Netting Member or otherwise in form and substance satisfactory to FICC, would certify that (i) such officer has read and understands the GSD Rules, including the CCLF rules; (ii) the Netting Member's Individual Total Amount has been incorporated into the Netting Member's liquidity planning;[42] (iii) the Netting Member acknowledges and agrees that its Individual Total Amount may be changed at the conclusion of any reset period or otherwise upon ten business days' Notice; (iv) the Netting Member will incorporate any changes to its Individual Total Amount into its liquidity planning; and (v) the Netting Member will continually reassess its liquidity plans and related operational plans, including in the event of any changes to such Netting Member's Individual Total Amount, to ensure such Netting Member's ability to meet its Individual Total Amount. FICC states that it may require any Netting Member

[32] For example, assume that a Netting Member's peak Receive and Deliver Obligations represent 5 and 3 percent, respectively, of the sum of all Netting Members' peak Receive and Deliver Obligations. The Netting Member's portion of the Aggregate Regular Amount (''Individual Regular Amount'') would be $600 million ($15 billion * 0.80 Receive Scaling Factor * 0.05 Peak Receive Obligation Percentage), plus $90 million ($15 billion * 0.20 Deliver Scaling Factor * 0.03 Peak Deliver Obligation Percentage), for a total of $690 million.

[33] *See* Notice, 82 at 14404.

[34] *See* Notice, 82 at 14404–05.

[35] For example, if the Aggregate Supplemental Amount is $50 billion and Tier 1 has a relative frequency weighting of 33 percent, all Netting Members that have generated liquidity needs that fall within Tier 1 would collectively fund $16.5 billion ($50 billion * 0.33) of the Supplemental Amount. Each Netting Member in that tier would be responsible for contributing toward the $16.5 billion, based on the relative frequency that the member generated liquidity needs within that tier.

[36] *See* Notice, 82 at 14404–05.

[37] *See* Notice, 82 at 14406.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] According to FICC, the attestation would not refer to the actual dollar amount that has been allocated as the Individual Total Amount. FICC explains that each Netting Member's Individual Total Amount would be made available to such Member via GSD's access controlled portal Web site. *Id.*

to provide FICC with a new certification in the foregoing form at any time, including upon a change to a Netting Member's Individual Total Amount or in the event that a Netting Member undergoes a change in its corporate structure.[43]

On a quarterly basis, FICC would conduct due diligence to assess each Netting Member's ability to meet its Individual Total Amount. This due diligence would include a review of all information that the Netting Member has provided FICC in connection with its ongoing reporting obligations pursuant to the GSD Rules and a review of other publicly available information. FICC also would test its operational procedures for invoking a CCLF Event, and Netting Members would be required to participate in such tests. If a Netting Member failed to participate in such testing when required by FICC, FICC would be permitted to take disciplinary measures as set forth in GSD Rule 3, Section 7.[44]

E. Liquidity Funding Reports Provided to Netting Members

On each business day, FICC would make a liquidity funding report available to each Netting Member that would include (i) the Netting Member's Individual Total Amount, Individual Regular Amount and, if applicable, its Individual Supplemental Amount; (ii) FICC's Aggregate Total Amount, Aggregate Regular Amount, and Aggregate Supplemental Amount; and (iii) FICC's regulatory liquidity requirements as of the prior business day. The liquidity funding report would be provided for informational purposes only.

II. Summary of Comments Received

The Commission received three comment letters in response to the Proposed Rule Change.[45] Two comment letters, the Ronin Letter and ICBC Letter, objected to the Proposed Rule Change. One comment letter from FICC responded to the objections raised by Ronin.

A. Objecting Comments

Ronin argues that the Proposed Rule Change would (1) place an unfair and anticompetitive burden on smaller Netting Members because such members do not present any settlement risk to FICC; (2) cause concentration and systemic risk by potentially forcing smaller Netting Members to leave GSD (as well as creating a barrier to entry for prospective new Netting Members) or clear their trades through larger Netting Members; and (3) cause FICC's liquidity needs to grow by potentially increasing the size of FICC's largest Netting Members.[46] As an alternative to the Proposed Rule Change, Ronin suggests that FICC should instead impose CCLF requirements only on larger Bank Netting Members that present FICC with settlement risk.[47]

Similarly, ICBC argues that the Proposed Rule Change would result in harmful consequences to smaller Netting Members and other industry participants.[48] Specifically, ICBC argues that the Proposed Rule Change could force smaller Netting Members to exit the clearing business or terminate their membership with FICC due to the cost of CCLF funding obligations, thereby (1) increasing market concentration; (2) decreasing market competition; (3) increasing FICC's credit exposure to its largest participant families; and (4) driving smaller Netting Members to clear transactions bilaterally instead of through a central counterparty.[49]

Although ICBC acknowledges that FICC, as a registered clearing agency, is required to maintain sufficient financial resources to withstand a default by the largest participant family to which FICC has exposure in ''extreme but plausible conditions,'' [50] ICBC argues that the scenario that CCLF is designed to address is not ''plausible'' because U.S. government securities are riskless assets that would not suffer a from liquidity shortage, even amidst a financial crisis similar to that in 2008.[51] Moreover, ICBC argues that CCLF is unnecessary because FICC's current risk models have proven to be effective.[52]

ICBC also argues that CCLF could (i) result in FICC's refusal to clear certain trades, thereby increasing the burden on the Bank of New York, the only private bank that clears a large portion of U.S. government securities; [53] (ii) cause FICC members to reduce their balance sheets devoted to the U.S. government securities markets, which would have broad negative effects on markets and taxpayers; [54] (iii) negatively impact traders with hedge positions, resulting in negative downstream effects on the smooth functioning of the U.S. government securities market; [55] and (iv) effectively drain liquidity from other markets by requiring more liquidity to be available to FICC than is necessary.[56]

B. Supporting Comment

The FICC Letter written in support of the proposal primarily responds to Ronin's assertions. In response to Ronin's concerns regarding the potential economic impacts on smaller non-bank Netting Members, FICC states that CCLF was designed to minimize the burden on smaller Netting Members and achieve a fair and appropriate allocation of liquidity burdens.[57] Specifically, FICC notes that it sought to structure CCLF so that (1) each Netting Member's CCLF requirement would be a function of the liquidity risk that each Netting Member's activity presents to GSD; (2) the allocation of the CCLF requirement to each Netting Member would be a ''fraction'' of the Netting Member's peak liquidity exposure that it presents to GSD; [58] and (3) the proposal would fairly allocate higher CCLF requirements to Netting Members that generate higher liquidity needs.[59] FICC further notes that, since CCLF contributions would be a function of the peak liquidity exposure that each Netting Member presents to FICC, FICC asserts that each Netting Member would be able to reduce its CCLF contribution by altering its trading activity.[60]

In response to Ronin's assertion that CCLF could promote concentration and systemic risk, FICC argues that the proposal would actually reduce systemic risk. Specifically, FICC asserts that, by providing FICC with committed liquidity to meet its cash settlement obligations to non-defaulting members during extreme market stress, CCLF would promote settlement finality and the safety and soundness of the securities settlement system, thereby reducing systemic risk, as discussed further below.[61]

Finally, in response to Ronin's concern that CCLF could cause FICC's liquidity needs to grow, FICC notes that

[43] *Id.*

[44] GSD Rules, *supra* note 10.

[45] *See supra,* note 4.

[46] Ronin Letter at 1–9.

[47] Ronin Letter at 7–9.

[48] ICBC Letter at 2–7.

[49] ICBC Letter at 2–6.

[50] ICBC Letter at 1–2.

[51] ICBC Letter at 3.

[52] *Id.*

[53] ICBC Letter at 2, 5.

[54] ICBC Letter at 3.

[55] ICBC Letter at 4.

[56] ICBC Letter at 5.

[57] FICC Letter at 3–4.

[58] *Id.* at 3. FICC represents that the ratio of CCLF requirement to Netting Member's peak liquidity need is significantly larger, on average, for the top 10 Netting Members compared to all other members. *Id.* at 4.

[59] *Id.* at 3–4. FICC notes that the Aggregate Regular Amount (proposed to be sized at $15 billion) would be applied to all Netting Members on a pro-rata basis, while the Aggregate Supplemental Amount, which would make up approximately 80 percent of the Aggregate Total Amount, would only apply to the Netting Members generating the largest liquidity needs (*i.e.,* in excess of $15 billion). *Id.* at 4.

[60] *Id.* at 3, 7.

[61] *Id.* at 7–8.

in its outreach to Netting Members over the past two years, bilateral meetings with individual Netting Members, and testing designed to evaluate the impact that changes to a Netting Member's trading behavior could have on the Historical Cover 1 Liquidity Requirement, FICC has found opportunities for Netting Members to reduce their CCLF requirements and, as a result, decrease the Historical Cover 1 Liquidity Requirement.[62] Specifically, FICC notes that during its test period, which spanned from December 1, 2016 to January 31, 2017, 35 participating Netting Members voluntarily adjusted their settlement behavior and settlement patterns to identify opportunities to reduce their CCLF requirements.[63] According to FICC, the test resulted in an approximate $5 billion reduction in FICC's peak Historical Cover 1 Liquirity Requirement, highlighting that growth of the Historical Cover 1 Liquidity Requirement could be limited under the proposal.[64]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[65] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, and provide arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[66] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the Proposed Rule Change's consistency with the Act and the rules thereunder. Specifically, the Commission believes that the Proposed Rule Change raises questions as to whether it is consistent with (i) Section 17A(b)(3)(F) of the Act,[67] which requires, in part, that clearing agency rules be designed to assure the safeguarding of securities in the custody or control of the clearing agency and, in general, protect investors and the public interest; (ii) Section 17A(b)(3)(I) of the Act,[68] which provides that clearing agency rules cannot impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act; and (ii) Rule 17Ad–22(e)(7) under the Act,[69] which requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by FICC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[70]

Specifically, Rule 17Ad–22(e)(7) requires policies and procedures for (i) maintaining sufficient liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions; [71] (ii) holding qualifying liquid resources sufficient to satisfy payment obligations owed to clearing members; [72] (iii) undertaking due diligence to confirm that FICC has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has (a) sufficient information to understand and manage the liquidity provider's liquidity risks and (b) the capacity to perform as required under its commitments to provide liquidity; [73] and (iv) maintaining and testing with each liquidity provider, to the extent practicable, FICC's procedures and operational capacity for accessing its relevant liquid resources.[74]

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to issues raised by the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) and 17A(b)(3)(I) of the Act, Rule 17Ad–22(e)(7) under the Act, cited above, or any other provision of the Act, or the rules and regulations thereunder. Interested persons are invited to submit written data, views, and arguments on or before June 19, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before June 23, 2017. 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–2017–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2017–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 filings also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (*http://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–2017–002 and should be submitted on or before June 19, 2017. If comments are received, any rebuttal comments should be submitted on or before June 23, 2017.

[62] *Id.* at 8–9.
[63] *Id.* at 9–10.
[64] *Id.*
[65] 15 U.S.C. 78s(b)(2)(B).
[66] *Id.*
[67] 15 U.S.C. 78q–1(b)(3)(F).
[68] 15 U.S.C. 78q–1(b)(3)(I).
[69] 17 CFR 240.17Ad–22(e)(7).
[70] *Id.*
[71] 17 CFR 240.17Ad–22(e)(7)(i).
[72] 17 CFR 240.17Ad–22(e)(7)(ii).
[73] 17 CFR 240.17Ad–22(e)(7)(iv).
[74] 17 CFR 240.17Ad–22(e)(7)(v).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11471 Filed 6–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 17g–1 and Form NRSRO, SEC File No. 270–563, OMB Control No. 3235–0625

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–1, Form NRSRO and Instructions to Form NRSRO under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).[1] The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for nationally recognized statistical rating organizations (''NRSROs''). Currently, there are 10 credit rating agencies registered as NRSROs with the Commission. Based on staff experience, NRSROs are estimated to spend annually a total industry-wide burden of 2,527 hours and external cost of $4,000 to comply with the requirements.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission 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.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 30, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11466 Filed 6–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80802; File No. SR–NASDAQ–2017–038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the First Trust Municipal High Income ETF

May 26, 2017.

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 May 16, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exchange's proposed rule change relating to the First Trust Municipal High Income ETF (the ''Fund'') of First Trust Exchange-Traded Fund III (the ''Trust''), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading of Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] However, no Shares are currently listed and traded on the Exchange. The Exchange believes the proposed rule change reflects no significant issues not previously addressed in the Prior Release.

The Fund is an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 9, 2008. The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the ''1940 Act''), has filed a registration statement on Form N–1A (''Registration Statement'') relating to the Fund with the Commission.[4] The Fund is a series of the Trust.

[75] 17 CFR 200.30–3(a)(57).

[1] *See* 17 CFR 240.17g–1 and 17 CFR 249b.300.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Commission previously approved the listing and trading of the Shares of the Fund. *See* Securities Exchange Act Release No. 78913 (September 23, 2016), 81 FR 69109 (October 5, 2016) (SR–NASDAQ–2016–002) (''Prior Release'').

[4] *See* Post-Effective Amendment No. 27 to Registration Statement on Form N–1A for the Trust, dated August 31, 2015 (File Nos. 333–176976 and 811–22245). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. Before

The primary purpose of this proposed rule change is to modify certain representations set forth in the Prior Release. Since the Prior Release, in evaluating its ability to construct a portfolio that would both enable the Fund to pursue its investment objectives effectively and satisfy the representations set forth in the Prior Release, the Adviser determined that, based on certain factors, including regulatory and market developments with portfolio management implications, additional flexibility would be needed to launch and operate the Fund. In particular, in October 2016, the Commission adopted a new rule (*i.e.,* Rule 22e–4 under the 1940 Act, referred to as the ''Liquidity Rule'') that will generally require ETFs (as well as mutual funds) to establish liquidity risk management programs that include a number of specified elements and may significantly impact funds' investment activities.[5] Among other things, funds will generally be required to (a) assess, manage and periodically review their liquidity risk; [6] (b) classify each of their portfolio investments into one of four liquidity categories based on the number of days in which the fund reasonably expects the investment would be convertible to cash (or sold or disposed of, as applicable) in current market conditions without significantly changing the market value of the investment (*i.e.,* highly liquid investments, moderately liquid investments, less liquid investments, and illiquid investments); (c) determine a minimum percentage of net assets that will be invested in ''highly liquid investments''; [7] and (d) limit ''illiquid investments'' [8] to 15% of net assets. Additionally, the Adviser took into account that recent increases in interest rates have been accompanied by substantial outflows from mutual funds and ETFs, and that future interest rate swings may spark increased market volatility and trigger potentially dramatic inflows and outflows.[9] To enable the Fund to operate effectively (including, in addition to pursuing its investment objectives, complying with the Liquidity Rule and responding to potential market volatility), the Adviser believes that additional portfolio management flexibility is needed and warranted. Additionally, for the reasons discussed in more detail below, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act.

As a related matter, the Exchange notes that although the Prior Release included certain representations that were based on the generic listing standards for index-based ETFs, the Exchange's ''generic listing standards'' for actively-managed ETFs (the ''Active ETF Generic Listing Standards'') [10] were recently adopted and, with one exception, the Fund's proposed revised representations would meet or exceed similar requirements for portfolios of fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B) under the Active ETF Generic Listing Standards (''Rule 5735(b)(1)(B)''). In addition, this proposed rule change would make certain changes to the description of the Fund's investments to achieve better consistency with the proposed new representations. Further, to provide the Adviser with greater flexibility in hedging interest rate risks associated with the Fund's portfolio investments, this proposed rule change would expand the Fund's ability to invest in derivatives by permitting it to invest in over-the-counter (''OTC'') forward contracts and OTC swaps, subject to a limitation that would be consistent with the limitation on investments in OTC derivatives set forth in Nasdaq Rule 5735(b)(1)(E) under the Active ETF Generic Listing Standards (''Rule 5735(b)(1)(E)'').

Changes to Representations

The Prior Release noted that the Fund would be actively managed and not tied to an index, but that under normal market conditions, on a continuous basis determined at the time of purchase, its portfolio of Municipal Securities (as defined in the Prior Release) would generally meet, as applicable, all except for two of the criteria for non-actively managed, index-based, fixed income ETFs contained in Nasdaq Rule 5705(b)(4)(A), as described therein. More specifically, the Prior Release stated that, under normal market conditions, the Fund's portfolio of Municipal Securities would meet the requirements of: (i) Nasdaq Rule 5705(b)(4)(A)(i) (requiring that the index or portfolio consist of ''Fixed Income Securities''); (ii) Nasdaq Rule 5705(b)(4)(A)(iv) (requiring that no component fixed income security (excluding Treasury securities) represent more than 30% of the weight of the index or portfolio, and that the five highest weighted component fixed income securities do not, in the aggregate, account for more than 65% of the weight of the index or portfolio); and (iii) Nasdaq Rule 5705(b)(4)(A)(v) (requiring that an underlying index or portfolio (excluding one consisting entirely of exempted securities) include securities from a minimum of 13 non-affiliated issuers) (collectively, the ''Rule 5705-Related Representations'').

Additionally, the Prior Release noted that Nasdaq Rule 5705(b)(4)(A)(iii) (relating to convertible securities) was inapplicable to the Fund's portfolio of Municipal Securities. Further, the Prior Release provided that the Fund's portfolio of Municipal Securities may not satisfy 5705(b)(4)(A)(vi) (requiring that component securities that in the aggregate account for at least 90% of the weight of the index or portfolio be either exempted securities or from a specified type of issuer) and that it would not generally satisfy Rule 5705(b)(4)(A)(ii) (requiring that components that in the aggregate account for at least 75% of the weight of the index or portfolio have a minimum original principal amount outstanding of $100 million or more). However, the Prior Release stated that under normal market conditions, at least 40% (based on dollar amount invested)

Shares are publicly offered, the Trust will file a post-effective amendment to its Registration Statement. The changes in this proposed rule change will not be implemented for the Fund until the post-effective amendment to the Registration Statement becomes effective. First Trust Advisors L.P. (the ''Adviser'') represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

[5] *See* Investment Company Act Release No. 32315 (October 13, 2016), 81 FR 82142 (November 18, 2016). Funds (except for smaller entities) will generally be required to comply with the liquidity risk management program requirements by December 1, 2018. Although funds that qualify as ''in-kind ETFs'' will be exempt from certain of the Liquidity Rule's requirements, as noted in the Prior Release, the Fund is typically expected to effect creations and redemptions on a cash basis.

[6] ''Liquidity risk'' means the risk that the fund could not meet requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund. *See* Rule 22e–4(a)(11). Funds will be required to consider various factors including, for ETFs, (i) the relationship between the ETF's portfolio liquidity and the way in which, and the prices and spreads at which, ETF shares trade, including, the efficiency of the arbitrage function and the level of active participation by market participants (including authorized participants); and (ii) the effect of the composition of baskets on the overall liquidity of the ETF's portfolio. *See* Rule 22e–4(b)(1)(i)(D).

[7] ''Highly liquid investment'' generally means any cash held by a fund and any investment that the fund reasonably expects to be convertible into cash in current market conditions in three business days or less without the conversion to cash significantly changing the market value of the investment. *See* Rule 22e–4(a)(6).

[8] ''Illiquid investment'' generally means any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment. *See* Rule 22e–4(a)(8).

[9] It should also be noted that the Liquidity Rule requires that in conjunction with assessing, managing and reviewing liquidity risk, a fund consider certain factors, including investment strategy and liquidity of portfolio investments during both normal and reasonably foreseeable stressed conditions. *See* Rule 22e–4(b)(1)(i)(A).

[10] *See* Securities Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016).

of the Municipal Securities in which the Fund invested would be issued by issuers with total outstanding debt issuances that, in the aggregate, have a minimum amount of municipal debt outstanding at the time of purchase of $75 million or more (the ''40/75 Representation'').[11]

In addition to the Rule 5705-Related Representations and the 40/75 Representation, the Prior Release provided that under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows,[12] the Fund's investments in Municipal Securities would provide exposure (based on dollar amount invested) to (a) at least 10 different industries (with no more than 25% of the value of the Fund's net assets comprised of Municipal Securities that provide exposure to any single industry) and (b) at least 15 different states (with no more than 30% of the value of the Fund's net assets comprised of Municipal Securities that provide exposure to any single state) (collectively, the ''Industry/State Representations''). Additionally, the Prior Release stated that under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, (a) with respect to 75% of the Fund's net assets, the Fund's exposure to any single borrower (based on dollar amount invested) would not exceed 3% of the value of the Fund's net assets and (b) with respect to 15% of the Fund's net assets, the Fund's exposure to any single borrower (based on dollar amount invested) would not exceed 5% of the value of the Fund's net assets (collectively, the ''Borrower Exposure Representations'').

The Prior Release also provided that under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, (a) with respect to the Municipal Securities in which the Fund invested that were rated investment grade by each nationally recognized statistical rating organization (''NRSRO'') rating such securities, at the time of purchase, the applicable borrower would be obligated to pay debt service on issues of municipal obligations that have an aggregate principal amount outstanding of $100 million or more and (b) with respect to all other Municipal Securities in which the Fund invested (referred to as ''Clause B Munis''), at the time of purchase of a Clause B Muni, the borrowers of all Clause B Munis held by the Fund, in the aggregate, would have a weighted average of principal municipal debt outstanding of $50 million or more (collectively, the ''Borrower Debt Representations'' and, together with the Borrower Exposure Representations, the Industry/State Representations, the 40/75 Representation and the Rule 5705-Related Representations, the ''Prior Representations'').

As indicated above, the Adviser has reconsidered the Prior Representations and concluded that additional flexibility will be needed to launch and operate the Fund. As a result, in this proposed rule change, the Exchange is proposing that, going forward: (a) The Prior Representations, except for the Industry/State Representations, would be deleted and (b) the representations included in the next two paragraphs (referred to as the ''New Representations'') would be added. Further, the Exchange notes that the New Representations have been designed to correspond to the requirements of Rule 5735(b)(1)(B), as these are more readily adapted to the Fund (as an actively-managed ETF) than the generic listing standards for index-based ETFs upon which the Rule 5705-Related Representations were based.

Although as described below, certain of the New Representations would meet or exceed similar requirements set forth in Rule 5735(b)(1)(B), it is not anticipated that the Fund would meet the requirement that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more (the ''Generic 100 Requirement'').[13] In general terms, the Fund would operate as an actively-managed ETF that normally invests in a portfolio of Municipal Securities (as defined in the Prior Release, with the modification described below). The Adviser notes that debt issuance sizes for municipal obligations are generally smaller than for corporate obligations.[14] Furthermore, as a general matter, municipal borrowers in certain industries in which the Fund currently intends to invest significantly[15] tend to have less outstanding debt than municipal borrowers in other municipal industries. Therefore, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows,[16] at least 40% (based on dollar amount invested) of the Municipal Securities in which the Fund invests[17] would be issued by issuers

[11] As noted in the Prior Release, the Commission has previously issued orders approving proposed rule changes relating to the listing and trading under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (which governs the listing and trading of fixed-income index ETFs on NYSE Arca, Inc.) to various ETFs that track indexes comprised of municipal securities (including high-yield municipal index ETFs) that did not meet the analogous requirement included in Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), but demonstrated that the portfolio of municipal securities in which the ETFs would invest would be sufficiently liquid (including Securities Exchange Act Release Nos. 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR–NYSEArca–2015–18) (order approving listing and trading of Vanguard Tax-Exempt Bond Index Fund); 71232 (January 3, 2014), 79 FR 1662 (January 9, 2014) (SR–NYSEArca–2013–118) (order approving listing and trading of Market Vectors Short High-Yield Municipal Index ETF); and 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120) (order approving listing and trading of SPDR Nuveen S&P High Yield Municipal Bond ETF)). *See also* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series); 72464 (June 25, 2014), 79 FR 37373 (July 1, 2014) (SR–NYSEArca–2014–45) (order approving continued listing and trading of PowerShares Insured California Municipal Bond Portfolio, PowerShares Insured National Municipal Bond Portfolio and PowerShares Insured New York Municipal Bond Portfolio); 72523 (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving listing and trading of iShares 2020 S&P AMT-Free Municipal Series); 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR–NYSEArca–2015–25) (order approving listing and trading of iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF); 78329 (July 14, 2016), 81 FR 47217 (July 20, 2016) (SR–BatsBZX–2016–01) (order approving listing and trading of VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF, VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF, and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF); and 79885 (January 26, 2017), 82 FR 8963 (February 1, 2017) (SR–NYSEArca–2016–100) (order approving listing and trading of Direxion Daily Municipal Bond Taxable Bear 1X Fund).

[12] As described in the Prior Release, the term ''initial invest-up period'' means the six-week period following the commencement of trading of Shares on the Exchange and the term ''periods of high cash inflows or outflows'' means rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods.

[13] *See* Nasdaq Rule 5735(b)(1)(B)(i).

[14] As indicated above in note 11, various ETFs seeking to track indexes comprised of municipal securities have previously sought and obtained approval by the Commission of proposed rule changes because they would not meet the requirement under the applicable generic listing standards that is similar to the Generic 100 Requirement.

[15] These industries include charter schools, senior living facilities (*i.e.,* continuing care retirement communities (''CCRCs'')) and special tax districts, among others. As noted in the Prior Release, in the case of a municipal conduit financing (in general terms, the issuance of municipal securities by an issuer to finance a project to be used primarily by a third party (the ''conduit borrower'')), the ''borrower'' is the conduit borrower (*i.e.,* the party on which a bondholder must rely for repayment) and in the case of other municipal financings, the ''borrower'' is the issuer of the municipal securities.

[16] *See* note 12 regarding the meaning of the terms ''initial invest-up period'' and ''periods of high cash inflows or outflows.''

[17] For the avoidance of doubt, in the case of Municipal Securities that are issued by entities

with total outstanding debt issuances that, in the aggregate, have a minimum amount of municipal debt outstanding at the time of purchase of $50 million or more (the ''40/50 Representation''). Based on its expertise and understanding of the municipal securities market and the manner in which municipal securities generally trade, the Adviser believes that, notwithstanding both the previous more stringent 40/75 Representation and the Generic 100 Requirement, the 40/50 Representation is appropriate in light of the Fund's investment objectives and the manner in which the Fund intends to pursue them.[18] Given the nature of the municipal securities market and the manner in which municipal securities generally trade, the expected availability of Municipal Securities that would satisfy the Fund's investment parameters, and the debt issuance profiles of the corresponding issuers and borrowers, the 40/50 Representation should both provide the Fund with flexibility to construct its portfolio and, when combined with the Industry/State Representations and the other New Representations included in this filing (including certain representations set forth below pertaining to fixed income securities weightings and number of non-affiliated issuers that are based on, but more stringent than, as applicable, the requirements set forth in Rule 5735(b)(1)(B)), should support the potential for diversity and liquidity, thereby mitigating the Commission's concerns about manipulation.[19]

Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows,[20] no component fixed income security (excluding the U.S. government securities described under the heading ''Other Investments'' in the Prior Release) would represent more than 15% of the Fund's net assets, and the five most heavily weighted component fixed income securities in the Fund's portfolio (excluding U.S. government securities) would not, in the aggregate, account for more than 25% of the Fund's net assets.[21] Further, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows,[22] the Fund's portfolio of Municipal Securities would include securities from a minimum of 30 non-affiliated issuers.[23] Moreover, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows,[24] component securities that in the aggregate account for at least 90% of the weight of the Fund's portfolio of Municipal Securities would be exempted securities as defined in Section 3(a)(12) of the Act (the ''Exempted Securities Representation'').[25] Additionally, to the extent the Fund invests in Municipal Securities that are mortgage-backed or asset-backed securities, such investments would not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the Fund's portfolio.[26]

The New Representations differ from the Prior Representations and do not, in certain respects, comply with Rule 5735(b)(1)(B) (particularly with respect to the Generic 100 Requirement). However, taking into account the nature of the municipal securities market and the manner in which municipal securities generally trade, in light of the requirements that the New Representations and the Industry/State Representations would impose (*e.g.,* concerning municipal debt outstanding, fixed income securities weightings, issuer diversification, the nature of the securities in which the Fund would invest (including representations relating to exempted securities and mortgage-backed and asset-backed securities), and exposure to industries and states), they should provide support regarding the anticipated diversity and liquidity of the Fund's Municipal Securities portfolio and should mitigate the risks associated with manipulation, while also providing the Adviser with the necessary flexibility to operate the Fund as intended.

Changes to Description of Certain Fund Investments

The Prior Release stated that under normal market conditions, the Fund would seek to achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in municipal debt securities

whose underlying assets are municipal bonds (''Municipal Entities''), the underlying municipal bonds would be taken into account.

[18] The Adviser notes that individual issues of municipal securities represented by CUSIPs (*i.e.,* the specific identifying numbers for securities) may be placed into categories according to common characteristics (such as rating, geographical region, purpose, and maturity). Municipal securities that share similar characteristics generally tend to trade similarly to one another; therefore, within these categories, issues may be considered somewhat fungible from a portfolio management perspective, allowing one CUSIP to be represented by another that shares similar characteristics for purposes of developing an investment strategy. Moreover, when municipal securities are close substitutes for one another, pricing vendors may be able to use executed trade information from similar municipal securities as pricing inputs for an individual security. This can make individual securities more liquid because valuations for a single security are generally better estimators of actual trading prices when they are informed by trades in a large group of closely related securities.

[19] The Exchange notes that, in addition to approving the Fund in the Prior Release, the Commission has also approved for listing and trading shares of other actively-managed ETFs that principally hold municipal securities. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of PIMCO Short Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund); 71617 (February 26, 2014), 79 FR 12257 (March 4, 2014) (SR–NYSEArca–2013–135) (order approving listing and trading of db-X Managed Municipal Bond Fund); 71913 (April 9, 2014), 79 FR 21333 (April 15, 2014) (SR–NASDAQ–2014–019) (order approving listing and trading of First Trust Managed Municipal ETF); and 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016) (SR–NYSEArca–2016–107) (order approving listing and trading of Cumberland Municipal Bond ETF).

[20] *See* note 12 regarding the meaning of the terms ''initial invest-up period'' and ''periods of high cash inflows or outflows.''

[21] *See* the Active ETF Generic Listing Standards requirement set forth in Nasdaq Rule 5735(b)(1)(B)(ii), which provides that no component fixed income security (excluding U.S. Treasury securities and government-sponsored entity (''GSE'') securities) may represent more than *30%* of the fixed income weight of the portfolio, and that the five most heavily weighted component fixed income securities in the portfolio (excluding U.S. Treasury securities and GSE securities) may not in the aggregate account for more than *65%* of the fixed income weight of the portfolio. For the avoidance of doubt, in the case of Municipal Securities that are issued by Municipal Entities, the underlying municipal bonds would be taken into account.

[22] *See* note 12 regarding the meaning of the terms ''initial invest-up period'' and ''periods of high cash inflows or outflows.''

[23] For the avoidance of doubt, in the case of Municipal Securities that are issued by Municipal Entities, the underlying municipal bonds would be taken into account. Additionally, for purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, would be treated as separate, non-affiliated issuers of Municipal Securities. The Active ETF Generic Listing Standards requirement set forth in Nasdaq Rule 5735(b)(1)(B)(iii) provides that generally, an underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers. Although not required, if the Fund's portfolio of Municipal Securities is comprised entirely of securities that meet the definition of ''municipal securities'' set forth in Section 3(a)(29) of the Act, then such portfolio would also be comprised entirely of ''exempted securities'' as defined in Section 3(a)(12) of the Act and, therefore, the requirements of Rule 5735(b)(1)(B)(iii) would not pertain to such portfolio; *see* the Exempted Securities Representation below (which refers to *90%* of the weight of the Fund's portfolio of Municipal Securities).

[24] *See* note 12 regarding the meaning of the terms ''initial invest-up period'' and ''periods of high cash inflows or outflows.''

[25] *See* the Active ETF Generic Listing Standards requirement set forth in Nasdaq Rule 5735(b)(1)(B)(iv)(d). For the avoidance of doubt, in the case of Municipal Securities that are issued by Municipal Entities, the underlying municipal bonds would be taken into account.

[26] *See* the Active ETF Generic Listing Standards requirement set forth in Nasdaq Rule 5735(b)(1)(B)(v).

that pay interest that is exempt from regular federal income taxes which are ''exempted securities'' under Section 3(a)(12) of the Act (collectively, ''Municipal Securities''). In light of the Exempted Securities Representation, going forward, the Exchange proposes to revise the foregoing by deleting the phrase ''which are 'exempted securities' under Section 3(a)(12) of the Act.'' In addition, the Prior Release stated that the Fund ''may invest up to 20% of its net assets in short-term debt instruments . . ., taxable municipal securities or tax-exempt municipal securities that are not exempted securities under Section 3(a)(12) under the Act, or it may hold cash.'' Going forward, the Exchange proposes to revise the foregoing by replacing the phrase ''taxable municipal securities or tax-exempt municipal securities that are not exempted securities under Section 3(a)(12) under the Act,'' with the phrase ''and taxable municipal securities and other municipal securities that are not Municipal Securities,''.

Additionally, the Prior Release stated that under normal market conditions, the Fund would invest at least 65% of its net assets in Municipal Securities that are, at the time of investment, rated below investment grade (*i.e.,* not rated Baa3/BBB − or above) by at least one NRSRO rating such securities (or Municipal Securities that are unrated and determined by the Adviser to be of comparable quality) (the ''65% Requirement''). The Prior Release also provided that the Fund could invest up to 35% of its net assets in ''investment grade'' Municipal Securities (meaning Municipal Securities that are, at the time of investment, rated investment grade (*i.e.,* rated Baa3/BBB − or above) by each NRSRO rating such securities (or Municipal Securities that are unrated and determined by the Adviser to be of comparable quality)) (the ''35% Limitation''). Going forward, for consistency with various other representations, the Exchange proposes to modify the beginning of the 65% Requirement by replacing the phrase ''Under normal market conditions, the Fund will invest at least 65% of its net assets'' with the following: ''Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund will invest at least 65% of its net assets''.[27] Similarly the Exchange proposes to modify the beginning of the 35% Limitation by replacing the phrase ''The Fund may invest up to 35% of its net assets'' with the following: ''Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund may not invest more than 35% of its net assets''.[28]

Changes To Expand Permitted Derivatives Investments

As described in the Prior Release, the Fund may (i) invest in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts (collectively, the ''Listed Derivatives'') and (ii) acquire short positions in the Listed Derivatives. No changes are being proposed with respect to the Fund's investments in the Listed Derivatives. Going forward, however, the Exchange proposes that the Fund's ability to invest in derivatives would be expanded to permit it to also invest in OTC forward contracts and OTC swaps (collectively, the ''OTC Derivatives'') to hedge interest rate risks associated with the Fund's portfolio investments.

On both an initial and continuing basis, no more than 20% of the assets in the Fund's portfolio would be invested in the OTC Derivatives and, for purposes of calculating this limitation, the Fund's investment in the OTC Derivatives would be calculated as the aggregate gross notional value of the OTC Derivatives.[29] The Fund would only enter into transactions in the OTC Derivatives with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.[30] The Fund's investments in both Listed Derivatives and OTC Derivatives would be consistent with the Fund's investment objectives and the 1940 Act and would not be used to seek to achieve a multiple or inverse multiple of an index.

The OTC Derivatives would typically be valued using information provided by a Pricing Service (as defined in the Prior Release). Pricing information for the OTC Derivatives would be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services (as defined in the Prior Release).

The Adviser represents that there would be no change to the Fund's investment objectives. Except as provided herein, all other facts presented and representations made in the Prior Release would remain unchanged. The Fund and the Shares would comply with all initial and continued listing requirements under Nasdaq Rule 5735.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, 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, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Except as provided herein, all other facts presented and representations made in the Prior Release would remain unchanged. The Fund would comply with all the initial and continued listing requirements under Nasdaq Rule 5735.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735 and, except as provided herein, all other facts presented and representations made in the Prior Release would remain unchanged. The Exchange notes that Shares have not yet been listed on the Exchange. Consistent with the Prior Release, the Exchange represents that trading in the Shares would be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that taking into account the nature of the municipal securities market and the manner in which municipal securities generally trade, in light of the requirements that the New Representations and the Industry/State Representations would impose (*e.g.,* concerning municipal debt outstanding,

[27] *See* note 12 regarding the meaning of the terms ''initial invest-up period'' and ''periods of high cash inflows or outflows.''

[28] *Id.*

[29] This limitation is consistent with the limitation set forth in Rule 5735(b)(1)(E).

[30] The Fund would seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser would evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's analysis would evaluate each approved counterparty using various methods of analysis and may consider the Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

fixed income securities weightings, issuer diversification, the nature of the securities in which the Fund would invest (including representations relating to exempted securities and mortgage-backed and asset-backed securities), and exposure to industries and states), they should provide support regarding the anticipated diversity and liquidity of the Fund's Municipal Securities portfolio and should mitigate the risks associated with manipulation, while also providing the Adviser with the necessary flexibility to operate the Fund as intended.

With one exception, the New Representations would meet or exceed similar requirements for portfolios of fixed income securities set forth in Rule 5735(b)(1)(B). In this regard, it is not anticipated that the Fund would meet the Generic 100 Requirement. Based on its expertise and understanding of the municipal securities market and the manner in which municipal securities generally trade, the Adviser believes that, notwithstanding both the previous more stringent 40/75 Representation and the Generic 100 Requirement, the 40/50 Representation is appropriate in light of the Fund's investment objectives and the manner in which the Fund intends to pursue them. Further, given the nature of the municipal securities market and the manner in which municipal securities generally trade, the expected availability of Municipal Securities that would satisfy the Fund's investment parameters, and the debt issuance profiles of the corresponding issuers and borrowers, the 40/50 Representation should both provide the Fund with flexibility to construct its portfolio and, when combined with the Industry/State Representations and the other New Representations, should support the potential for diversity and liquidity, thereby mitigating the Commission's concerns about manipulation.

Further, in connection with the proposal to permit the Fund to invest in the OTC Derivatives, the Exchange notes that the ability to invest in the OTC Derivatives would provide the Adviser with additional flexibility in hedging interest rate risks associated with the Fund's portfolio investments and would be subject to a limitation that is consistent with the limitation set forth in Rule 5735(b)(1)(E). Additionally, the Fund would only enter into transactions in the OTC Derivatives with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.

In addition, a large amount of information would be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value (as described in the Prior Release), available on the NASDAQ OMX Information LLC proprietary index data service, would be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund would disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange notes that the Fund does not yet have publicly offered Shares and does not yet have Shares listed and traded on the Exchange. Before Shares are publicly offered, the Trust will file a post-effective amendment to its Registration Statement. The Shares will not be publicly offered until the post-effective amendment to the Registration Statement becomes effective.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would provide the Adviser with the flexibility needed to proceed with launching the Fund, accommodating the listing and trading of Managed Fund Shares for an additional actively-managed exchange-traded product, thereby enhancing competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove 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–NASDAQ–2017–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR–NASDAQ–2017–038 and should be submitted on or *before* June 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11402 Filed 6–1–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 10018]

In the Matter of the Designation of Abu Nidal Organization, Also Known as ANO, Also Known as Black September, Also Known as the Fatah Revolutionary Council, Also Known as the Arab Revolutionary Council, Also Known as the Arab Revolutionary Brigades, Also Known as the Revolutionary Organization of Socialist Muslims as a Specially Designated Global Terrorist Pursuant Section 1(b) of Executive Order 13224, as Amended

In accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended (''the Order''), I hereby determine that the organization known the Abu Nidal Organization no longer meets the criteria for designation under the Order, and therefore I hereby revoke the designation of the aforementioned organization as a Specially Designated Global Terrorist pursuant to section 1(b) of the Order.

This determination shall be published in the **Federal Register**.

Dated: May 10, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–11443 Filed 6–1–17; 8:45 am]

BILLING CODE 4710–AD–P

[31] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10017]

In the Matter of the Designation of Abu Nidal Organization, Also Known as ANO, Also Known as Black September, Also Known as the Fatah Revolutionary Council, Also Known as the Arab Revolutionary Council, Also Known as the Arab Revolutionary Brigades, Also Known as the Revolutionary Organization of Socialist Muslims Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the Abu Nidal Organization as foreign terrorist organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of the Abu Nidal Organization as a foreign terrorist organization, pursuant to section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Dated: May 10, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–11442 Filed 6–1–17; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 526 (Sub-No. 9)]

Notice of Railroad-Shipper Transportation Advisory Council Vacancy

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of vacancy on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

SUMMARY: The Board hereby gives notice of a vacancy on RSTAC for an at-large (public interest) representative. The Board is soliciting suggestions for candidates to fill this vacancy.

DATES: Nominations are due on June 29, 2017.

ADDRESSES: Suggestions may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 526 (Sub-No. 9), 395 E Street SW., Washington, DC 20423–0001 (if sending via express company or private courier, please use zip code 20024). Please note that submissions will be available to the public at the Board's offices and posted on the Board's Web site under Docket No. EP 526 (Sub-No. 9).

FOR FURTHER INFORMATION CONTACT: Katherine Bourdon at 202–245–0285. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–47, 11101–24), as well as the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–07) and railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–27).

RSTAC was established upon the enactment of the ICC Termination Act of 1995 (ICCTA), on December 29, 1995, to advise the Board's Chairman; the Secretary of Transportation; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. ICCTA directs RSTAC to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The Secretary of Transportation and the members of the Board cooperate with RSTAC in providing research, technical, and other reasonable support. RSTAC also prepares an annual report concerning its activities and recommendations on whatever regulatory or legislative relief it considers appropriate. RSTAC is not

subject to the Federal Advisory Committee Act.

RSTAC currently consists of 19 members. Of this number, 15 members are appointed by the Chairman of the Board, and the remaining four members are comprised of the Secretary of Transportation and the Members of the Board, who serve as *ex officio,* nonvoting members.[1] Of the 15 members, nine members are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chairman, and at least four of the voting members must be representatives of Class II or III railroads. The remaining six members to be appointed—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but are entitled to participate in RSTAC deliberations.

RSTAC is required by statute to meet at least semi-annually. In recent years, RSTAC has met four times a year. Meetings are generally held at the Board's headquarters in Washington, DC, although some are held in other locations.

RSTAC members receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses, as the Board cannot provide for these expenses. RSTAC may solicit and use private funding for its activities, again subject to certain restrictions in ICCTA. RSTAC members currently have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RSTAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Commn's.,* 79 FR 47482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

[1] The Surface Transportation Board Reauthorization Act of 2015, Pub. L. 114–110 (2015), increased the number of Board Members from three to five. Once additional Board Members are appointed, they will also serve as RSTAC *ex officio,* nonvoting members.

RSTAC members are appointed for three-year terms. A member may serve after the expiration of his or her term until a successor has been appointed. No member will be eligible to serve in excess of two consecutive terms.

Due to the expiration of an RSTAC member's term, a vacancy exists for an at-large (public interest) representative. Upon appointment by the Chairman, the new representative will serve for three years and may be eligible to serve a second three-year term following the end of his or her first term.

Suggestions for candidates to fill this vacancy should be submitted in letter form, identify the name of the candidate, provide a summary of why the candidate is qualified to serve on RSTAC, and contain a representation that the candidate is willing to serve as a member of RSTAC effective immediately upon appointment. RSTAC candidate suggestions should be filed with the Board by June 29, 2017. Members selected to serve on RSTAC are chosen at the discretion of the Board's Chairman. Please note that submissions will be available to the public at the Board's offices and posted on the Board's Web site under Docket No. EP 526 (Sub-No. 9).

Authority: 49 U.S.C. 1325.

Decided: May 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2017–11426 Filed 6–1–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On March 1, 2017, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment on a proposal to extend, with revision, the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101). The FFIEC 101 is completed only by banking organizations subject to the advanced approaches risk-based capital rule. Generally, this rule applies to banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposures (advanced approaches banking organizations).

The agencies proposed to remove two credit valuation adjustment (CVA) items from the exposure at default (EAD) column on FFIEC 101 Schedule B, Summary Risk-Weighted Asset Information for Banks Approved to Use Advanced Internal Ratings-Based and Advanced Measurement Approaches for Regulatory Capital Purposes (items 31.a and 31.b, column D).

The comment period for this proposal expired on May 1, 2017. The agencies did not receive any comments addressing the proposed changes and are now submitting requests to OMB for review and approval of the extension, with revision, of the FFIEC 101. These reporting changes would take effect as of the September 30, 2017, report date.

DATES: Comments must be submitted on or before July 3, 2017.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible to *prainfo@occ.treas.gov.* Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0239 (FFIEC 101), 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You

may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. 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.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to ''FFIEC 101,'' by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form 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.

FDIC: You may submit comments, which should refer to ''FFIEC 101,'' by any of the following methods:

- *Agency Web site: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''FFIEC 101'' in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Room MB–3007, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to regulatory reporting requirements discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the proposed revised FFIEC 101 form and instructions can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3829, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Federal Deposit Insurance Corporation, 550 17th Street NW., Room MB–3007, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to extend for three years, with revision, the FFIEC 101, which is currently an approved collection of information for each agency.

Report Title: Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0239.

Estimated Number of Respondents: 20 national banks and federal savings associations.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 53,920 burden hours to file.

Board

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 6 state member banks; 16 bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Time per Response: 674 burden hours per quarter for state member banks to file, 677 burden hours per quarter for bank holding companies and savings and loan holding companies to file; and 3 burden hours per quarter for intermediate holding companies to file.

Estimated Total Annual Burden: 16,176 burden hours for state member banks to file; 43,328 burden hours for bank holding companies and savings and loan holding companies to file; and 72 burden hours for intermediate holding companies to file.

FDIC

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 2 insured state nonmember banks and state savings associations.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 5,392 burden hours to file.

General Description of Reports

Each advanced approaches banking organization is required to file quarterly regulatory capital data on the FFIEC 101. The FFIEC 101 information collection is mandatory for advanced approaches banking organizations: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies).

The agencies use these data to assess and monitor the levels and components of each reporting entity's capital requirements and the adequacy of the

entity's capital under the Advanced Capital Adequacy Framework; to evaluate the impact of the Advanced Capital Adequacy Framework on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches banking organizations in understanding expectations relating to the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework. Submitted data that are released publicly will also provide other interested parties with information about advanced approaches banking organizations' regulatory capital.

Current Actions

On March 1, 2017, the agencies requested comment on proposed revisions to the FFIEC 101 reporting requirements.[1] The proposed revisions would remove EAD information related to CVAs that already is captured in a separate item on FFIEC 101 Schedule B. Specifically, the agencies proposed to remove column D (EAD) for items 31.a, ''Credit valuation adjustments—simple approach,'' and 31.b, ''Credit valuation adjustments—advanced approach.'' These line items were added to the FFIEC 101 report in March of 2014, and were intended to provide data pertaining to the CVA requirements under the agencies' regulatory capital rules [2] for over-the-counter (OTC) derivative activities.

The agencies subsequently determined that the EAD information reported in column D of items 31.a and 31.b on FFIEC 101 Schedule B is already captured in column D of item 10 (OTC derivatives—no cross-product netting—EAD adjustment method) on FFIEC 101 Schedule B. Continuing to collect the same EAD information in both places is not only redundant, but also may be misinterpreted by the users of FFIEC 101 data as additional default risk held by the reporting entity. For these reasons, the agencies proposed removing column D for items 31.a and 31.b on FFIEC 101 Schedule B. The agencies would continue to collect the amount of risk-weighted assets for CVAs in column G of items 31.a and 31.b on FFIEC 101 Schedule B.

The comment period for this proposal expired on May 1, 2017. The agencies did not receive any comments on the proposal and are now submitting requests to OMB for review and approval of the extension, with revision, of the FFIEC 101. While the agencies originally proposed making the changes effective as of the June 30, 2017, report date, due to the time required for the PRA revision process, the agencies have revised the proposal. As revised, the reporting changes would instead take effect as of the September 30, 2017, report date. However, as the two items being removed are not made public or otherwise shared outside the agencies, reporting entities may elect to adopt the changes immediately by ceasing to report column D of items 31.a and 31.b on FFIEC 101 Schedule B.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: May 24, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, May 25, 2017.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, this 26th day of May, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–11420 Filed 6–1–17; 8:45 am]

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

[1] 82 FR 12274 (March 1, 2017).

[2] For national banks and federal savings associations, 12 CFR part 3 (OCC); for state member banks and holding companies, 12 CFR part 217 (Board); and for state nonmember banks and state savings associations, 12 CFR part 324 (FDIC).

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; extension of comment period.

SUMMARY: On April 19, 2017, the Department of the Treasury published a notice of availability and request for comments regarding an application to reduce benefits under the United Furniture Workers Pension Fund A (UFW Pension Fund) in accordance with the Multiemployer Pension Reform Act of 2014. The purpose of this notice is to extend the comment period and provide more time for interested parties to provide comments.

DATES: The comment period for the notice published April 19, 2017 (82 FR 18536), is extended. Comments must be received on or before June 20, 2017.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the UFW Pension Fund, please contact Treasury at (202) 622–1534 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants

and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny. On March 15, 2017, the Board of Trustees of the UFW Pension Fund submitted an application for approval to reduce benefits under the plan. As required by the MPRA, that application has been published on Treasury's Web site at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.*

On April 19, 2017, Treasury published a notice in the **Federal Register** (82 FR 18536), in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the UFW Pension Fund application. The notice provided that comments must be received by June 5, 2017. This notice, which Treasury is publishing in consultation with the PBGC and the Department of Labor, announces the extension of the comment period in order to give additional time for interested parties to provide comments. Comments are requested from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the UFW Pension Fund. Consideration will be given to any comments that are timely received by Treasury on or before June 20, 2017.

Dated: May 26, 2017.

Thomas West,

Tax Legislative Counsel, Office of Tax Policy.

[FR Doc. 2017–11440 Filed 6–1–17; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, with the concurrence of the General Services Administration, the Secretary of the Treasury is renewing the Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association (the ''Committee'').

FOR FURTHER INFORMATION CONTACT: Fred Pietrangeli, Director, Office of Debt Management (202) 622–1876.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for Federal financing and public debt management. The Committee meets to consider and provide advice on special items pertaining to immediate Treasury funding requirements and longer term approaches to manage the national debt in a cost-effective manner. The Committee usually meets immediately before Treasury announces each quarter funding operation, although special meetings also may be held. Membership consists of up to 20 representative or special government employee members who are appointed by Treasury. The members are senior-level officials who are employed by primary dealers, institutional investors, and other major participants in the government securities and financial markets as well as recognized experts in the fields of economics and finance, financial market analysis, or financial institutions and markets.

The Treasury Department transmitted copies of the Committee's renewal charter to the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Financial Services in Congress on or about April 26, 2017.

Dated: May 18, 2017.

Fred Pietrangeli,

Director of the Office of Debt Management.

[FR Doc. 2017–10656 Filed 6–1–17; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetic and Special Disabilities; Notice of Meeting Cancellation

Agency: Department of Veterans Affairs.

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the meeting of the Advisory Committee on Disability Compensation, previously scheduled to be held at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, on May 24–25, 2017, *has been cancelled.*

For more information, please contact Judy Schafer, Ph.D., Designated Federal Officer at (202) 461–7315 or via email at *Judy.Schafer@va.gov.*

Dated: May 26, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–11404 Filed 6–1–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Friday,
No. 105 June 2, 2017

Part II

Federal Communications Commission

47 CFR Parts 0, 1, et al.
Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0, 1, 61, 63, and 69

[WC Docket Nos. 16–143, 05–25, GN Docket No. 13–5, and RM–10593; FCC 17–43]

Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, a Report and Order provides a new framework for deregulating Business Data Services in areas where competitive forces are able to ensure just and reasonable rates. Acknowledging the presence of increased competition evidenced by the record in this proceeding, the Federal Communications Commission amends its rules to reflect changes in the business data services marketplace. By adopting this framework the Commission acts to further bolster competition and investment in business data services, and takes further steps to decrease the cost of broadband infrastructure deployment.

DATES: Effective August 1, 2017, except for the amendments to §§ 1.776, 61.45, 61.201, 61.203, and 69.701, which shall become effective after OMB approval of those amendments. The Federal Communications Commission will publish documents in the **Federal Register** announcing the effective dates.

FOR FURTHER INFORMATION CONTACT: Joseph Price, Wireline Competition Bureau, Pricing Policy Division at (202) 418–1423 or *Joseph.Price@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 17–43, adopted April 20, 2017, and released April 28, 2017. The summary is based on the public redacted version of the document, the full text of which can be found at the following internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC–17–43A1.pdf*. To request alternative formats for persons with disabilities (*e.g.,* accessible format documents, sign language, interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Synopsis

I. Introduction

1. After more than ten years of studying the business data services (also referred to as BDS) market, numerous requests for comment, and a massive data collection, we at long last recognize the intense competition present in this market and adjust our regulatory structure accordingly. The record in this proceeding demonstrates substantial and growing competition in the provision of business data services in areas served by incumbent local exchange carriers (LECs) subject to price cap regulation. By adopting a framework which accounts for these dynamic competitive realities, we will create a regulatory environment that promotes long-term innovation and investment by incumbent and competitive providers alike which well-serves business data services customers.

2. The record indicates the market for business data services is dynamic with a large number of firms building fiber and competing for this business. The *2015 Collection* identified 491 facilities-based companies providing business data services in the enterprise market. Competitive LECs such as Zayo and Birch continue to invest and expand their competitive fiber networks with very successful results. Competitive LECs earned $23 billion of the $45 billion in business data services revenue in 2013. Cable providers have also emerged as formidable competitors in this market. Cable business data services are reported to have grown at approximately 20 percent annually for the past several years and, increasingly, they have emphasized Internet access and managed services, which directly compete with the products being offered by the incumbent and other competitive LECs.

3. Although incumbent LECs once dominated the business data services market selling circuit-based DS1s and DS3s, such technology is becoming obsolete. Significant increases in bandwidth demand are being driven by bandwidth-hungry applications, mainly video services (teleconferencing, training, etc.) as well as by web and cloud-based services. These rapidly increasing bandwidth demands will place an ever increasing demand for services such as Ethernet, especially over fiber, which can scale bandwidth to meet these requirements more effectively than can the old legacy services. Packet-based services, which include Ethernet, already make up a large part of the business data services marketplace. In 2013, more than 40 percent of the approximately $45 billion in dedicated service revenues were for packet-based services. Based on provider and analyst forecasts, we expect this shift from circuit-based to packet-based services to continue at a rapid pace.

4. Against this competitive backdrop, we now move away from the traditional model of intrusive pricing regulation for incumbent LECs, recognizing that ex ante pricing regulation is of limited use—and often harmful—in a dynamic and increasingly competitive marketplace. Indeed, there is a significant likelihood ex ante pricing regulation will inhibit growth and investment in many cases. In such circumstances, we should not continue unnecessary regulations, much less extend them to new services or providers. Instead, we adopt a framework based on our market analysis and a careful balancing of the costs and benefits of ex ante pricing regulation that deregulates counties where the provision of price cap incumbent LECs' business data services is deemed sufficiently competitive.

5. This Report and Order (Order), therefore, provides a new framework for business data services that minimizes unnecessary government intervention and allows market forces to continue working to spur entry, innovation, and competition. Our decisions stem from careful consideration of the data submitted in the proceeding and the thoughtful comments and ex parte communications submitted into the record. Our thinking on how to evaluate competition and design pricing regulation evolved as we engaged with economists, advocates, and others to develop an administrable approach to deregulate in areas where competitive forces are able to ensure just and reasonable rates. To a large extent in the business data services market, the competition envisioned in the Telecommunications Act of 1996 (1996 Act) has been realized, and this Order is an important step in updating our rules to adequately reflect such market developments. We reach these conclusions aware of the increased investment in facilities and service deployment that has occurred in response to similar deregulatory action by the Commission. In tandem with adoption of this new, more appropriate framework designed to maximize competition and investment in business data services, we are also taking further steps to decrease the costs of deploying our nation's broadband infrastructure.

II. Background

6. Business data services refers to the dedicated point-to-point transmission of

data at certain guaranteed speeds and service levels using high-capacity connections. Henceforth, we refer to special access services as a subset of business data services that we continue in some circumstances to subject to ex ante pricing regulation. Specifically, special access services include DS1 and DS3 interoffice facilities and channel terminations between an incumbent LEC's serving wire center and an interexchange carrier (IXC), and end user channel terminations, although ex ante pricing regulation would only apply to certain end user channel terminations. Businesses, non-profits, and government institutions use business data services to enable secure and reliable transfer of data, for example, as a means of connecting to the Internet or the cloud, and to create private or virtual private networks. Business data services support applications that require symmetrical bandwidth, substantial reliability, security, and connected service to more than one location. Business data services are significant to our nation's economy—revenues reported by providers in response to the *2015 Collection* total almost $45 billion for 2013, and revenues for the broader market for enterprise services, which include voice, Internet, private network, web-security, cloud connection, and other digital services, could exceed $75 billion annually. Moreover, these numbers do not capture the indirect contribution of business data services to the nation's economy as business customers rely on these services for their commercial operations.

7. The Commission has historically subjected the provision of business data services by incumbent LECs to dominant carrier safeguards. The focus of this proceeding is on areas where incumbent LECs are subject to price cap regulation in setting their business data services rates. Beginning in 1999, through a series of Commission actions, the Commission: (1) Began granting price cap incumbent LECs pricing flexibility by establishing both Phase I relief (which permitted the provision of volume and term agreements and contract tariffs) and Phase II relief (which relieved the carrier of price cap regulation) through ''triggers'' using collocation as a proxy for competition; (2) adopted the ''CALLS plan,'' which separated business data services into its own basket and applied separate ''X-factors;'' (3) initiated a rulemaking to examine a number of aspects of the business data services market, including whether to apply and how to calculate a productivity-based X-factor and whether to maintain or modify the pricing flexibility rules; and (4) granted a number of price cap incumbent LECs forbearance from dominant carrier regulation, including tariffing and price cap regulation for their newer packet-based and higher bandwidth optical transmission broadband services, including a ''deemed grant'' for Verizon from application of Title II to these services.

8. In August 2012, the Commission suspended its pricing flexibility rules because they were ''not working as predicted, and . . . fail[ed] to accurately reflect competition in today's special access markets.'' In December 2012, the Commission released the *Data Collection Order and FNPRM,* to collect data, analyze how competition, ''whether actual or potential, affects prices, controlling for all other factors that affect prices,'' and ''determine what barriers inhibit investment and delay competition, including regulatory barriers, . . . and what steps the Commission could take to remove such barriers to promote a robust competitive market and permit the competitive determination of price levels.'' The Commission planned to use the results of its analysis to evaluate whether to change its existing pricing flexibility rules ''to better target regulatory relief in competitive areas'' and evaluate remedies to address potentially unreasonable terms and conditions. The Bureau released the *Data Collection Implementation Order* on September 18, 2013, clarifying the scope of the collection. Pursuant to the Paperwork Reduction Act (PRA), the Office of Management and Budget (OMB) approved the data collection subject to modifications which the Bureau implemented in an order released on September 15, 2014. By February 27, 2015, the last group of filers were required to respond to the *2015 Collection.*

9. Most recently, the Commission released the *Tariff Investigation Order and Further Notice* on May 2, 2016. The *Order and Further Notice* declared certain terms and conditions in the tariffs of the four largest incumbent LECs unlawful, proposed to replace the existing business data services regulatory structure with a new framework, and sought comprehensive comments on the proposed new framework.

III. Competitive Conditions for Business Data Services

10. In this section we consider competition among traditional and non-traditional providers of end-to-end business data services and the circumstances under which market conditions warrant a deregulatory approach for certain business data services consistent with our obligation to ensure that the rates for services offered by common carriers are just and reasonable. In the present rulemaking, the Commission has already determined that significant aspects of the pricing flexibility regulatory regime have failed. Thus, we must now decide whether to allow that failure to continue or to implement changes. As is often the case with complex problems, there is no ideal dataset available or which we could collect in a reasonable timeframe or expense, which would answer all doubts. Although the *2015 Collection* was critical to our analysis of competition in BDS markets, it was not the only data, or data analysis, relied upon to reach the conclusions here. Analysis of varying data and market realities in the record also are relied upon as part of the determination of where competitive pricing pressure exists, and the fuller analysis is considered within the context of our commitment to implement administrable regulatory changes. As such, we have carefully parsed the available evidence and apply reasoned judgment to decide the questions before us.

11. The Commission is charged with ensuring that the rates, terms, and conditions for services offered by common carriers are just and reasonable and that services are not offered on an unreasonably discriminatory basis pursuant to sections 201(b) and 202(a) of the Communications Act. We ''may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'' In addition, section 706(a) of the 1996 Act states that the Commission:

> shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

12. Our public interest evaluation ''necessarily encompasses . . . among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets [and] accelerat[ing] private sector deployment of advanced services.'' A competition analysis is critical to our public interest evaluation and is informed by, but not

limited to, traditional antitrust principles designed to protect competition. The Commission, in conducting an analysis, may ''consider technological and market changes as well as trends within the communications industry, including the nature and rate of change.'' Analyzing the competitive nature of the market for business data services will allow us to make a determination about the appropriate way to balance the costs and benefits of applying ongoing regulation to particular business data services.

13. For business data services provided over DS1s and DS3s supplied by the incumbent LEC we find that a nearby potential business data services supplier, in the form of a wired communication network provider, generally tempers prices in the short term and results in reasonably competitive outcomes over three to five years (the medium term). For example, a cable company that has fiber nodes nearby, and hence the ability to provide both Ethernet-over-fiber and, even more readily Ethernet-over-Hybrid Fiber Coax (EoHFC), if a profitable opportunity arises, is particularly relevant to pricing decisions of a business data services provider wishing to retain a customer.

14. Our conclusion is based in part on record evidence indicating a cost structure for business data services that incentivizes suppliers with existing networks to compete vigorously for customers. We also base our conclusion on findings that the impact of the first entrant on price will be substantially higher than the impact of subsequent entrants and business data services pricing is often determined by a customer bidding or request for proposal (RFP) process in which even an uncommitted, though usually nearby, entrant can compete for the customer's business, and then build out to the customer. Consequently, the presence of nearby competitive facilities tempers pricing as competitors are generally aware of competitive facilities that can be expanded to reach an additional customer with reasonable costs should the incumbent's pricing exceed competitive levels (supracompetitive prices). Furthermore, where an incumbent sets supracompetitive prices it is vulnerable to competitors vying for customers.

15. Together the evidence demonstrates how even a single competitor exerts competitive pressure which results in just and reasonable rates. This evidence demonstrates that the significant network investment required to provide business data services to end users is increasingly being leveraged in ways that prevent substantial abuses of market power. Given such incentives, the presence of two current competitors or providers with their own fiber nodes within a half mile, hereafter referred to as medium-term entrants, or that will serve over the medium term, are sufficient to provide competitive pressure to adequately discipline prices. Our finding is also based on evidence of competition that is currently in place or likely to arise over the medium term.

16. In addition, we find that business data services with bandwidths in excess of the level of a DS3 generally experience reasonably competitive outcomes, and to the extent they do not today, will do so over the medium term even where a facility-based competitor has no nearby facilities. We come to this conclusion based on a record that shows almost no evidence of competitive problems in the supply of these higher bandwidth services, and which shows higher bandwidth opportunities are particularly attractive to competitive LECs. We make a similar finding for transport services, where the record presents little evidence of competitive problems, and where low bandwidth demand is quickly turning into high bandwidth demand. We make a similar finding for lower bandwidth packet-based services. We reach these conclusions because, compared with time division multiplex (TDM) services, competitive LECs are considerably more active in the supply of packet-based services, are on a considerably more level playing field in supplying these new services against incumbent LECs, and have better incentives to supply such future-proof services where demand is growing rapidly.

A. Introduction

17. We analyze the *2015 Collection,* and look to analyses and other evidence submitted in this proceeding, to reach findings concerning competiveness in the business data services industry. In conducting our analysis, we consider market concentration as highly relevant, but do not find it determinative absent consideration of market dynamics. We also look at specific market-based circumstances when considering actual and potential sources of competition.

18. In this section, we review the competitiveness of business data services, in general, as well as issues raised by commenters. We reach findings as to the degree of competitiveness in the business data services industry and consider industry trends on competitive entry. We look to see if services are reasonably substitutable to determine an appropriate product market, and, in the case of geographic markets, we look to areas ''in which the seller operates and to which the purchaser can practicably turn for supplies.'' As part of that analysis we observe high barriers to entry, but also observe a significant penetration of competitive business data services facilities being deployed and upgraded with a number of technologies throughout the country, particularly in areas with significant customer demand. Moreover, we observe a strong willingness on the part of providers to extend their networks half a mile to meet demand, especially over the medium term.

19. Consistent with antitrust principles, we distinguish product markets by generally looking at whether various services are reasonably interchangeable, with differences in price, quality, and service capability being relevant. In the case of geographic markets, we look at both supply and demand substitution. For both product and geographic markets, it is conventional to undertake a hypothetical monopolist test to determine market definitions. That approach begins with the smallest plausible market definition and considers likely consumer substitution if a hypothetical monopolist in that market imposed a small but significant and non-transitory increase in price (SSNIP). We do not have data that would enable a more formal application of such a test, but our market analysis considers purchasers' willingness and ability to substitute services, suppliers, and geographies. The extent to which supply is broadly competitive wherever the incumbent LEC also faces a facility-based rival is strengthened by our findings as to specific product markets, and refined by our analysis of geographic markets.

B. Product Market

20. When defining a product market, to ensure our action affects an appropriate group of services, we look to which services are sufficiently similar to reasonably be considered substitutes. We consider a number of factors, including the ''practical indicia'' identified by the Supreme Court, such as ''industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.'' Not all of these factors must be present to define the relevant product market. Perfect substitutability is not required as part of our broad review of business

data services markets and our narrow consideration of certain special access service inputs that comprise a full business data services customer circuit.

21. A product that substitutes for another demonstrates a possibility that consumers will purchase the competing service of a competitor, including a potential entrant. Consequently, we consider providers with facilities used to supply one service that could be used to provide another. For example, we see not only substitution between circuit- and packet-based business data services, but the capacity to supply both services over the same underlying facilities, indicating the two services are likely in the same market, and more importantly, that suppliers of either service are in the same market, as they could readily provide the other service over their facilities. Similarly, while best-efforts services do not generally appear to be a good substitute for business data services (and *vice versa*), legacy hybrid-fiber-coaxial (HFC) and copper (in fact, generally hybrid-fiber-copper) facilities are commercially used to provide low bandwidth business data services (if not always at the highest commercially available quality standards). Unbundled network elements (UNEs), dark fiber, and fixed wireless services and facilities used to provision business data services also play competitive roles in business data services markets.

1. Circuit- and Packet-Based Business Data Services

22. The legacy technology for providing business data services is circuit-based using TDM. Incumbent LECs are the primary facilities-based suppliers of TDM-based services, including DS1s and DS3s with symmetrical capacities of 1.5 Mbps and 45 Mbps, respectively. For decades, these workhorses were the only options available to meet the high-capacity needs of users. TDM circuits provide dedicated, secure, reliable and low-delay transmission service for moving voice, data, and video traffic, but do not effectively scale for data intensive applications. To increase bandwidth for DS1s/DS3s, providers must bond multiple circuits together. For example, providers can bond up to eight DS1s to achieve a maximum bandwidth of 12 Mbps. DS3s are rarely bonded, however, because with the increased cost, the more logical option is to use a newer technology, such as a packet-based service. In contrast, packet-based services have bandwidth options ranging from 2 Mbps up to 100 Gbps, depending on the connection medium, and are easily scaled over fiber to meet increasing data demands.

23. Because packet-based networks move packets over a shared transport channel, they are more efficient than a circuit-based network where transmission capacity is reserved even when not used. The routing and reassembling of data packets, however, can lead to packet loss, jitter, and latency, affecting the quality of service needed to support certain applications desired by users, *e.g.,* real-time and mission critical applications. Providers can mitigate these delays through packet prioritization and setting performance parameters, like assigning different classes of service and quality of service levels (with, for example, Service Level Agreements (SLAs)). In this way, providers can shape and differentiate networks to improve performance to meet the specific needs of users. Backed by performance guarantees, packet-based business data services can provide the same, if not better, level of security, reliability, and symmetrical speeds as a DS1 or DS3 service. Packet-based business data services can also accomplish this with greater efficiency and scalability to satisfy a user's growing bandwidth demands.

24. Functionally, TDM and packet-based services are broadly interchangeable in the business data services realm as both are used to provide connectivity for data network and point-to-point transmissions and both services can be delivered over the same network infrastructure. Incumbent and competitive LEC providers offer both types of services to similar types of customers and their marketing materials juxtapose these two technologies against each other. Customers of TDM-based services are also switching to packet-based services. And commenters representing suppliers agree, with limited exception, the services, whether circuit-based or packet-based, are substitutes and in the same product market.

25. Substitution between these two services, however, is generally one directional. New customers, more likely than not, are choosing to purchase Ethernet services, subject to their availability and pricing, and existing customers of TDM-based service are switching to Ethernet. There is no evidence suggesting Ethernet customers are switching to DS1s and DS3s. Nor as a policy matter would we want that to occur as the technology transition is moving towards the eventual termination of TDM service offerings altogether. We want to encourage that migration, while mitigating disruptions to existing customers, to help unleash the benefits of network innovation for American businesses and consumers. We note, however, that adopting a framework that promotes deployment of competitive services, as we do here, benefits even those customers who maintain TDM services due to static needs—or for whatever reason—because increased competition for these services is likely to place downward pressure on prices.

26. We find circuit- and packet-switched business data services that offer similar speed, functionality, and quality of service characteristics fall within the same product markets for the purposes of action taken here, even though there is evidence suggesting the two technologies have important distinctions. Indeed, the Commission has long considered TDM and packet-based business data services as functionally interchangeable at comparable capacities and has consistently included both types of business data services in its orders and forbearance decisions. Courts, in turn, have upheld the Commission's view. Although commenters have pointed out some differences between these technologies, there is considerable evidence in the record indicating that the Commission's view on sufficient substitutability of circuit and packet business data services still holds. We believe that legacy TDM business data services suppliers would be constrained by the threat of potential customer loss to packet-based business data services suppliers.

2. Ethernet Over Hybrid-Fiber Coax

27. Packet-based business data services over fiber are the gold standard for the industry because they provide the greatest flexibility to efficiently scale bandwidth to the highest speeds at the highest performance levels. There is debate in the record, however, on whether we should include the packet-based Ethernet services provided by cable companies using their HFC networks in the product market for business data services. Our review of the record now confirms that competitive pressure on low bandwidth packet-based services carried on fiber and legacy TDM services is significant, and should be taken into account as part of any competitive market test.

28. In many ways, EoHFC is much like other modes of business data services. Ethernet-over-HFC technology provides point-to-point wireline connection at symmetrical speeds, albeit limited to 10 Mbps. Although EoHFC is not as reliable as circuit-switched or fiber connections, some cable companies are able to guarantee 99.9 percent availability (as compared to fiber's 99.99 percent). In addition to

availability, some cable companies offer further performance guarantees, addressing jitter, latency, packet loss, availability, and mean time to repair their Ethernet over Data over Cable Service Interface Specification (DOCSIS) service. Comcast targets its EoHFC service to ''[c]ustomers with low to medium bandwidth requirements that need enterprise features.'' Wholesalers, for instance, are increasingly leaning on the cable industry's vast EoHFC network to address the needs of their multi-regional customers. AT&T ''has certified both fiber-based and HFC-based Ethernet offerings from cable companies for use in [its business data] services, as well as for use in [its] backhaul services.'' Similarly, Sprint has announced that it now provides business data services over cable company facilities, including EoHFC.

29. Cable network architecture is constantly evolving to meet bandwidth needs. Yet, some cable providers contend that their EoHFC business data services are not substitutable with fiber business data services because they do not offer SLAs, or where they do so, they are limited, for example, guaranteeing only repair intervals and availability for their Ethernet over DOCSIS service. Some wholesalers echo this view, reporting that they do not consider EoHFC (DOCSIS 3.0) as competitive with their services mainly because of limited availability, performance issues, and inadequate SLA guarantees. However, the record shows that while these performance levels may be undesirable for some customers, many others readily accept lower performance guarantees in exchange for lower prices. We believe that a significant tipping point has been reached in the evolution of these services when even incumbent LECs such as Verizon and AT&T are using these services for their own business customers out-of-region.

3. ''Best-Efforts'' Internet Access Services

30. Best-efforts Internet access services describe basic Internet access as generally marketed to residential and small business subscribers. At the most-basic level, best-efforts and dedicated business data services appear to be interchangeable: End users can use both services to access the Internet or create virtual private networks. However, best-efforts Internet access is provided with asymmetrical speeds and without service performance guarantees. Whereas dedicated packet-based business data services allow for packet prioritization and quality of service priority tiers, best-efforts services do not. Also, while dedicated business data services commonly provide at least 99.9 percent network reliability, with higher guarantees being available for fiber services, and guarantees for latency and jitter, best-efforts services generally do not offer any reliability guarantees, although some cable providers offer some non-binding performance ''assurances.''

31. In the *Further Notice,* the Commission stated that ''it is likely that best effort services may not be in the same product market or markets as BDS,'' and sought comment on its analysis. However, the record includes evidence of incumbent LECs losing small- and medium-sized customers to cable's best-efforts offerings, despite noticeable differences in performance and prices between business data and best-efforts services. In many circumstances, customers are willing to trade guaranteed service levels for higher bandwidth and better prices while receiving some symmetricity. Cable providers routinely pitch their best-efforts business broadband services to customers as substitutable for legacy TDM services. Charter, for example, markets its Business Internet Essentials16 services as ''more than 13 times faster than T1.'' And the record shows cable has been largely successful in growing its best-efforts business broadband services: ''Comcast reports a [REDACTED] increase for best efforts business broadband services from 2014–2015'' and ''TWT reports a [REDACTED] from 2014 to 2015 increase in its BIA (its best-efforts HFC service).'' Incumbent LECs are noticing this competition. For example, AT&T explains that its sales team has discovered that ''for the thirteen-month period from November 2014 through November 2015, a very substantial portion of AT&T's competitive losses were to cable companies and a significant portion of those losses were to best efforts cable services.'' We, therefore, observe substitution and best-efforts networks supporting business data services for certain customers, but we do not observe broad substitution or substantial performance similarities with fiber-based business data services sufficient to determine that best-efforts service and its underlying facilities are in the same product market. In that manner, best-efforts services can be distinguished from other business data services. Despite this, the underlying facilities used to provision best-efforts services, even over legacy media such as HFC, can be and are being repurposed to provide business data services.

4. Unbundled Network Elements

32. We find that the use of UNEs, where available, allow competitive providers to effectively compete in lower bandwidth services, and are particularly close substitutes for DS1s and DS3s. However, use and availability of UNEs is diminishing.

33. Incumbent LECs are required by section 251(c)(3) of the Act and section 51.319 of the Commission's rules to provide requesting common carriers with DS1s, DS3s, and bare copper loops as UNEs. UNE rates, as determined by the state public utility commissions, are based on forward-looking costs not on the incumbent LECs' historical costs, and are thus typically lower than the incumbent LEC rates for regulated DS1 and DS3 services. UNEs are intended to facilitate competition by lowering barriers to stimulate facilities-based entry into local markets, and the Commission has imposed unbundling obligations ''in those situations where [it] find[s] that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition.''

34. The availability of UNEs from incumbent LECs is limited based on the ''impair'' standard. DS1 and DS3 UNE loops are allowed only in those buildings located within the service area of an incumbent LEC wire center that falls below a certain business density line and fiber collocation threshold. As a practical matter, competitive LECs cannot rely on UNEs at a wire center in which the competitive LEC is not collocated. Moreover, with incumbent LECs increasingly retiring their copper-based infrastructure, the question also arises as to the extent to which UNEs will remain available in the future.

5. Dark Fiber

35. Dark fiber is a physical connection with no transmission functionality. As the Commission explained in the *Further Notice,* ''the supply of BDS over dark fiber takes on significant aspects of facility-based competition'' and ''is particularly attractive for competitive LECs seeking to expand their network reach and mobile carriers needing cell site backhaul.'' Also, the record indicates that mobile wireless service providers are purchasing and then self-equipping dark fiber as a substitute for a fiber-based Ethernet service. Accordingly, we find dark fiber is a substitute for special access services purchased for wireless backhaul. Similarly, dark fiber is a substitute outside of backhaul, *e.g.,* serving the

needs of retail business customers. The *2015 Collection* includes all competitive provider locations serviced over dark fiber, and staff and key economists that used that data considered competition over it as essentially equivalent to facility-based competition.

6. Satellite Services

36. Satellite providers also offer business data services that are currently relied upon by many end users as acceptable substitutes for all or part of their broadband demand requirements, particularly for those that find best efforts provisioning from competitors acceptable. General Communications (GCI), for example, reports that its ''satellite network provides communications services to small towns and communities throughout rural Alaska.'' Hughes Network Systems, LLC ''provides advanced broadband satellite service throughout the United States, including high-speed internet and voice over internet protocol ('VoIP').'' The record indicates that ''Globalstar, a low Earth orbit satellite constellation for satellite phone and low-speed data communications, has proposed a service that could help to relieve some Wi-Fi congestion in anchor institutions.'' And there is evidence that satellite service providers are increasingly competing for lower bandwidth business data service customers, which is a trend we anticipate will continue in the future. We do not find BDS provided by satellite currently to be in the relevant product market but note that its presence underscores the conservative nature of our approach. In that manner, we believe satellite broadband offerings have the potential to add competitive pressure to the BDS market, especially for customers that do not require high bandwidth or symmetrical service with significant service level or uptime guarantees.

7. Fixed Wireless Services

37. We find fixed wireless services are a substitute for cell site backhaul but are, at most, a gap filler for special access services providing last-mile access to buildings. While mobile wireless carriers have relied substantially on fixed wireless, *i.e.,* often self-provisioning microwave point-to-point links to backhaul traffic from their macro cell sites, the record on providers viably using fixed wireless to provide last-mile access to buildings is not as clear. In the *Further Notice,* the Commission found the record somewhat mixed on the use of fixed wireless technology to provide business data services. But the Commission also noted that the *2015 Collection* included locations served by fixed wireless technology and mobile providers ''reported that about 40 percent of their cell sites have self-provisioned wireless backhaul facilities.'' In response, commenters discussed at a high level, whether or not to include fixed wireless in the business data services product market, or for a competitive market test with few additional facts provided on the subject of substitutability. The record also indicates that XO and Windstream use fixed wireless service in their networks.

38. We continue to find fixed microwave is a competitive backhaul alternative for wireless providers. The record, however, on using fixed wireless to provide reliable last-mile access to end users is mixed, especially in urban areas where line-of-sight can be more of a concern than in rural areas. We do note the promise of 5G technology to provide quality high-bandwidth fixed wireless services to businesses in urban areas. AT&T and Verizon are currently engaged in 5G trials, but commercial service is not expected to launch until 2020. That said, given the very high capacity of 5G networks, they have the potential to represent a significant additional source of competition for the provision of business data services. We will continue to monitor these developments. For now, at a minimum, we consider fixed wireless an option for last-mile building access when wireline facilities are unavailable. Fixed wireless can also serve as a viable backup transmission option for business data services purchasers to increase network diversity. As such, for purposes of the relevant business data services product market, we find that fixed wireless services should be included in the product market discussion because they may have a competitive effect on the market.

C. Geographic Market

39. To determine an appropriate geographic market for competitive analysis purposes, we consider the area to which consumers can ''practically turn for alternative sources,'' and within which providers can reasonably compete. The geographic market ''must . . . both correspond to the commercial realities of the industry and be economically significant.'' Yet, as with product market delineation, a geographic market ''cannot . . . be defined with scientific precision.'' In this section we conclude that a half mile is the relevant geographic market for the analysis of competition in the business data services market.

40. In the *Further Notice,* the Commission described the relevant geographic market in the business data services industry as likely being larger than the average census block and sought comment on its analysis. Considering varying buildout distances in the record, the Commission observed in the *Further Notice* that competitors are willing to extend their facilities to reach potential customers ''typically rang[ing] from [REDACTED] to [REDACTED] Commenters indicate that incumbent LECs and competitive providers have similar buildout criteria. For larger competitive LECs, the majority of buildouts are within [REDACTED] from a splice point and less commonly exceed [REDACTED] away from the nearest splice point on their fiber network. Accordingly, the Commission suggested that the relevant ''geographic market definition for lower bandwidth BDS lies somewhere above the average area of the Census block with BDS demand and below'' the Metropolitan Statistical Area (MSA).

41. While buildouts are common within a half mile from a competitor's facilities, the subsequent record shows buildouts of half mile and farther often occur. However, such buildouts become much less likely as the distance from a cost-effective and viable fiber junction point increases as well as due to variation in entry barriers. Some providers may be more risk tolerant and will build out farther than others, as they weigh location-specific factors, including the identities of the nearby competitors, the specifics of competing local networks, local geographic features (such as traversing rivers or highways), local building codes, the density of local demand, and bandwidth demanded. However, we find risk tolerant businesses and buildouts farther than a half mile to be the exception.

42. The nature of the customer's demand is particularly relevant to competitors' build decisions. As the Commission recognized recently when considering the likelihood of a competitor entering a building to provide business data services, ''[t]he lower the demand in the building, the closer another competitive fiber provider must be to that building for entry to be profitable and thus likely.'' Nevertheless, even when demand is too low to justify the buildout, competitive providers often consider whether there are any potential customers nearby and may even take a more circuitous route in anticipation of additional demand from businesses along the route. The *2015 Collection* indicates that in many areas of the country competitive facilities are sufficiently close to make deployment to buildings with low demand justifiable. In 2013, there was at

least one competitive provider in ''more than 95 percent of MSA census blocks with BDS demand, and . . . those census blocks represented about 97 percent of the total BDS connections and 99 percent of business establishments.'' The average distance between buildings with incumbent LEC business data services customers and competitive fiber was just 364 feet. About half of these buildings were within 88 feet of competitive fiber facilities and 75 percent were within 456 feet.

43. We tested the sensitivity of our finding that a location currently faces or likely will face competitive choices over the medium term if it is within a half mile of a location served over the facilities of at least one competitive provider. For example, based on the *2015 Collection,* 64.1 percent of all locations with business data services demand in price cap areas were within a quarter mile of at least one competitive provider, as compared to 79.5 percent that were within a half mile, and 89.4 percent that were within a mile. Thus, our approach lies somewhat above the middle of these two extremes, each of which had limited record support. We also found 45.8 percent of locations with business data services demand to be within a half mile of at least two competitive providers, and 64.6 percent of all locations with business data services demand to be within a mile of at least two competitive providers. In addition, as discussed, cable competition is considerably more developed than it was in 2013. Given the nature of cable networks, we expect the percent of locations within range of a quarter mile of at least one facilities-based competitor, to be more similar to the percent of locations within a half mile of one such competitor today.

44. As we detail more fully below, there is strong evidence of rapid growth in competitive investment. Because of this ongoing investment, the average building with business data services demand over time will find itself closer and closer to a competing facilities-based competitor's network. The declining distances between buildings with business data services demand and the fiber networks of competitive providers in general, and those of cable providers with extensive fiber networks in particular, create a cycle of investment and benefits within an area outside of any particular building. Because even small businesses' bandwidth needs are constantly growing, the demand for additional investment is likely to be amplified. Greater fiber investment leads to lower costs of deploying facilities to neighboring buildings, which in turn leads to greater investment. As costs continue to drop through further fiber deployments, and potential revenues for each building served increase with growing demand for high bandwidth services, these competitive providers with significant legacy (in the case of cable) and newer networks have powerful economic incentives to enter and price their services aggressively. This effect will provide a strong disciplining force to the incumbent service providers of surrounding locations, and will grow over time. Importantly, all else equal, we expect competitors will be particularly likely to build out to locations where incumbents have priced supracompetitively, to the extent these are the most profitable locations. In this manner, over time, abuses of market power can be addressed through localized competitive pressures.

45. The record demonstrates that most business data services providers are willing and able to profitably invest and deploy facilities within a half mile of existing competitive facilities, and often have the ability to build out after winning a customer's bid for business, depending upon the scale of investment required to reach the customer. Accordingly, we conclude that the relevant geographic market for purposes of this market analysis is the region within a half mile of a location with business data services demand. We make this determination by focusing on the factors that influence suppliers of business data services, as opposed to customers, because in most instances a customer is unlikely to impact service pricing by moving its physical location in response to a material increase in price. This point is true for both single- and multi-location customers that seek dedicated connections to each location.

46. We also find that business data services providers commonly sell their service in bidding markets, and this is especially so for multi-site contracts. Winning bidders then build out to the customer within an agreed-upon provisioning timeframe. Consequently, competitors outside of the customer's location can affect pricing because the winning bid represents the competitive offer that others must beat, even if that competitor does not already have facilities in the customer's building. That competitor is increasingly relevant the closer the competitor's network facilities, actual or potential fiber splice points, are to the customer (because its costs likely fall with proximity, making its bid more likely to constrain the winning bid). Thus, the geographic range of the competition posed by a business data services provider is not limited to the specific locations of active circuits sold at a particular point in time.

47. Sprint and Windstream challenge our assertion that business data services markets are affected by bidding market dynamics. However, business data services contracts, being large-scale, winner-take-all awards, closely approximate the conditions laid out by Klemperer of an ideal bidding market environment. Moreover, nearby competition has similar cost to competition in the location itself (*i.e.,* ''homogenous'' products) and is therefore likely to effectively constrain prices.

D. Competitive Entry in Business Data Services Markets

48. As part of our analysis, we consider how varying market characteristics impact entry by competing providers in business data services markets, along with evidence of entry barriers being overcome by traditional and non-traditional competing providers. We then conclude that, while there can be high barriers to business data services entry, evidence shows that firms frequently choose to enter this market with significant investments, particularly in areas of significant demand, indicating sufficient competitive conditions that do not warrant direct regulatory intervention.

1. Barriers to Entry

49. Market analysis is incomplete without an evaluation of entry barriers. As antitrust principles explain, ''[t]he prospect of entry into the relevant market will alleviate concerns about adverse competitive effects only if such entry will deter or counteract any competitive effects of concern . . . .'' In evaluating the prospect of entry, agencies ''examine the timeliness, likelihood, and sufficiency of the entry efforts an entrant might practically employ.''

50. *Timeliness.* Entry must be rapid enough to make an attempt by an incumbent to set a price above competitive levels unprofitable. Depending on the distance, buildout does not appear to take very long, about three to four months, relative to the typical multi-year contracts used in selling these services. Thus, in cases where demand is prospective and not urgent, and where a competitive LEC has existing facilities nearby, for example, within a half mile, buildout or even its threat would be timely enough to restrain a dominant provider in the relevant market. Instances in which

business data services are sold as part of a bidding or similar process also allow for timely entry, as providers are typically afforded an opportunity to provision a customer after a bid is accepted and before service must begin. Moreover, even if a competitor with a nearby wireline network (for example, perhaps a cable company) is not presently capable of entry over the short term, we expect it will become so over the medium term.

51. *Likelihood.* ''Entry is likely if it would be profitable,'' and profitability is precisely what competitive LECs consider when deciding whether to deploy fiber to a customer's location. Profitability depends on projected expenditures required for construction and anticipated revenues from the customer and potential customers. Indeed nearby wireline network providers are actively meeting nearby demand, a process that can be expected to accelerate over the next few years.

52. Competitive LECs rarely build on speculation and instead prefer to have a customer in place before undertaking the costs associated with buildouts. However, providers are also willing to consider potential customers nearby or along the route (and may even build a more circuitous route to pass by more potential customers). Providers generally look to recover construction costs within a certain period of time, [REDACTED] while taking into account potential customers. When the cost of construction is high, providers may lengthen the recoupment period.

53. *Sufficiency.* We found earlier that the presence of a second competitor in this industry is sufficient to place an effective competitive constraint on business data services supply. Given the likelihood of entry wherever a competitive wireline network is nearby, this will also ensure a similar effect over the medium term.

54. This evidence demonstrates that providers find ways to enter nearby geographic markets and win customers. They consider nearby demand and build circuitous routes, they lengthen the terms of their contracts to recover the cost of buildout, and they place spare splice points along their network routes to accommodate future demand. These facts show that once providers have sunk substantial costs into a network, it is in their interest to build laterals to as many customers as possible because the relative cost of a lateral is much lower than the cost of other network facilities. And this conclusion is corroborated by evidence of extensive competitive entry into the business data services marketplace.

2. Entry and Investment in Business Data Services Markets

55. *Evidence of Competitive Entry by Cable.* The entry of cable into business data services provisioning has been the most dramatic change in the market over the past decade. Cable companies began serving business customers using their ''best-efforts'' broadband networks with asymmetric speeds in the mid-2000s, but these services were not generally competitive with incumbent LECs' business data services. Cable companies now offer over fiber carrier-grade reliability, scalability, and quality of service functionality to compete for the largest enterprise customers across the country and also offer Carrier Ethernet services with symmetrical speeds up to 10 Mbps over their within-footprint near ubiquitous DOCSIS 3.0 EoHFC networks. As a result, incumbent LECs increasingly find themselves competing with cable for business data services customers. CenturyLink, for example, ''views cable providers to be its primary special access competitors, given their expansive networks and rapid growth in business markets.''

56. The growth in consumer broadband demand has also lowered the costs to cable companies of deploying fiber to business locations. As consumer bandwidth demand grew exponentially over the past decade, cable providers were required to invest billions of dollars pushing fiber deeper into their networks as they needed to continually split nodes to keep pace with the demand. Sprint and Windstream challenge the reasonableness of relying on past cable deployment in response to growth in consumer broadband demand to project future cable build out to meet business data services demand. However, it is not unreasonable to acknowledge the fact that every increment of additional investment in cable networks brings fiber facilities closer to nearby business data services demand and lowers the cost of building to meet that demand. Compared to just ten years ago, fiber within the franchise areas of cable providers that offer high-speed DOCSIS services has dramatically lowered the cost of building out fiber to the surrounding business locations due to the shorter distances required to reach any location. For example, as a result of network expansion, in March of 2015, ''approximately [REDACTED] percent of business locations [were] within 500 feet of Comcast's EoHFC facilities, an increase from [REDACTED] percent in 2013.''

57. Like other competing providers, cable companies have focused investment on building fiber networks for higher-bandwidth Ethernet services, which is enabling them to overcome limitations of traditional coaxial-based cable systems that cannot meet higher bandwidth demands. For example, after first entering the marketplace in 2009, Comcast ''rolled out Metro Ethernet services to 20 of the top 25 metropolitan areas entirely over fiber, with plans ranging from 1 Mbps to 10 Gbps'' in 2011. Comcast has invested ''more than $5 billion since 2010'' on network infrastructure to provide business data services. Comcast had connections, largely using fiber, to approximately [REDACTED] business locations in 2016, an increase of [REDACTED] since 2013. Comcast has also ''added [REDACTED] over the 2012–2015 period.''

58. Charter, the second largest cable company and the [REDACTED] largest provider of fiber connections to buildings, has invested more than [REDACTED] annually, starting in 2013, towards the provision of business data services. In 2016, Charter acquired fellow cable companies, Legacy Time Warner Cable (TWC) and Bright House Networks, LLC, for $90 billion. A stated benefit of the merger was the increased ability of the combined entities to compete for ''large enterprise and other multi-location customers.'' Post-merger Charter plans to invest $2.5 billion into serving commercial areas within its footprint. Charter has ''expanded its provision of BDS to approximately [REDACTED] new locations'' since the beginning of 2013. As of the second quarter of 2016, Charter's commercial revenues driven by enterprise, small and medium business growth rose to over $2 billion, an increase of 12.6 percent over the prior-year period.

59. Cox, the third largest cable company, was one of the first cable companies entering the business data services market and by June 2016 served ''more than [REDACTED] locations with dedicated point-to-point services,'' primarily over its fiber facilities. Cox has invested more than [REDACTED] in fiber and equipment over the past 10 years, with [REDACTED] invested since 2013. In 2015, ''Cox earned approximately [REDACTED] in annual revenue from its [business data services] . . . and projects earnings of [REDACTED] for 2016, up from [REDACTED] in 2013.''

60. In 2016, Altice, a European company, completed its roughly $10 billion acquisition of Cablevision Systems Corp. (Cablevision), which includes Cablevision's business service unit, Cablevision Lightpath Inc., making Altice the fourth largest cable provider. As of the end of 2015, Cablevision's

Lightpath unit had 7,700 buildings connected to its fiber network, compared to the 4,400 buildings serviced in 2010. Mediacom, the fifth largest cable operator serving ''rural and exurban areas of the Midwest and Southeast. . . . began deploying BDS on a significant scale throughout its service territories in 2011.'' The company has invested more than $4 billion on its ''high capacity [fiber] network that serves thousands of small rural communities.'' This network supports over 1,000 macro cell sites, and Mediacom is planning to expand its network coverage in downtown areas and commercial districts to connect tens of thousands of new business customer locations.

61. Even smaller cable operators are entering the business data services marketplace. ACA, representing a substantial number of small cable operators, estimates its members are ''making at least tens of millions and upwards of $300 million of investments annually to deploy facilities to support the provision of BDS.'' ACA's members primarily offer Ethernet business data services over fiber.

62. Cable business services are reported to have grown at approximately 20 percent annually for the past several years, and increasingly, they have emphasized Internet access and managed services (*i.e.,* security and routing, controlled and secured access to the cloud) showing a shift in demand to higher (and more competitive) bandwidths. Business services will reportedly generate more than $12 billion for U.S. cable providers in 2015, up 20 percent or so from their milestone total of $10 billion in 2014. According to one analyst, business revenues for cable companies will almost double their 2014 total by 2019.

63. *Expansion by Other Competitive Providers.* Non-cable competitive LECs and other non-traditional providers also continue to invest and expand their network reach. For example, Zayo, founded in 2007, now has more than 25,000 buildings connected to its metro fiber network. Network connectivity makes up 45 percent of Zayo's business with 38 percent from dark fiber solutions. Zayo committed to investing an estimated $740 million in major network expansion projects from March 2014 to December 2015. For the quarter ending on June 30, 2016, Zayo reported $506.7 million of consolidated revenue, which includes $112 million from its Canadian operations. Zayo recently closed its purchase of Electric Lightwave adding an estimated 12,100 route miles to its network as well as connectivity to 3,100 enterprise buildings.

64. We reject Sprint/Windstream's argument that the Commission has not properly accounted for recent consolidation, including the CenturyLink/Level 3 and Verizon/XO mergers. The CenturyLink/Level 3 proposed merger is still pending regulatory approvals, and in approving transfer of control applications related to the Verizon/XO transaction, the Commission found that ''Verizon's acquisition of XO within Verizon's incumbent LEC territory will have a *de minimis* impact on competition in the provision of BDS.'' Sprint/Windstream's criticism that the two largest competitive LECs on the Vertical Systems Group Leaderboard for Ethernet providers will soon be incumbent LECs fails to take into consideration that the bulk of acquired facilities in these transactions is outside the incumbent LEC territory and in fact remains in the category of a competitive provider for the purposes of the Commission's BDS marketplace data. Moreover, our analysis herein takes into account the increased competition we have seen in the market since our 2013 data collection, including increased competitive pressure from cable providers.

65. Lightower has an all-fiber network with service to over 22,000 locations and more than 7,000 wireless towers and small cells in 17 states in the Northeast, Mid-Atlantic, and Midwest, serving ''enterprise, government, carrier, and data center customers.'' Lightower acquired regional fiber provider, Fibertech Networks, in 2015 for $1.9 billion, doubling its network reach, and acquired Sidera Networks in 2013 for $2 billion. The company spends about [REDACTED] percent of its revenues on capital investment. Lightower recently added over 350 route miles of fiber in North Carolina.

66. *Industry Concentration.* In the *Further Notice,* the Commission considered several measures of concentration in varying geographies, indicating ''uniformly high levels of concentration.'' On a national level, concentration among incumbent LECs was observed, based on 2013 reported business data services revenues. Degrees of incumbent LEC concentration also were observed at geographies of unique building locations, census blocks, and zip codes. The measures were difficult to determine precisely by geography due to certain biases. Putting the concentration measures in context, the Commission explained that it ''d[id] not yet know how much competitive pressure different forms of supply place on other suppliers, or how many suppliers, accounting for their differences, are sufficient to make prices effectively competitive (matters we have sought comment on above).'' We find the concentration measures alone are largely poor indicators of whether market conditions exist that will constrain business data services prices, and overstate the competitive effects of concentration.

67. Traditional and non-traditional providers of business data services constrain an incumbent's pricing outside of immediate geographies used to describe market concentration in the *Further Notice* in three ways. First, with nearby facilities, a business data services provider is able to expand its presence to timely reach a customer. Second, a business data services competitor does not need to be already offering service in a given building to constrain a supplier at that location. A nearby business data services competitor constrains pricing by responding to RFPs and participating in similar customer service bidding requests, which creates a pricing floor without any physical presence of the potential competitor in the nearby geography. Third, concentration is greater for the declining legacy DS1 and DS3 channel termination services, in which incumbent LECs have a historical advantage, compared to newer, and in-demand, Ethernet business data services, which are largely competitive. We therefore conclude that concentrated supplies of DS1s and DS3s in a particular building or cell tower or similar are not reliable indicators of whether business data services pricing decisions are made competitively.

E. Other Examples of Competitive Effects in the Business Data Services Market

68. *Increasing Ethernet Revenue.* Comments show that, as a result of more substitutes in the market, incumbent LECs face declining sales in TDM services, notably DS1s and DS3s, including customer loss to cable operators and other providers. A recent report by Frost & Sullivan found that the migration from TDM to Ethernet business data services is fueling double-digit revenue growth for Ethernet business data services, and that this growth rate is expected to increase as Ethernet networks expand. In particular, Ethernet-based services accounted for more than 40 percent of total dedicated service revenues in 2013, and Ethernet business data services revenues have been growing by over 20 percent a year since then. The Ethernet bandwidth of incumbent LECs grew by only 5.3

percent in 2013, while the bandwidth of competitive providers grew by 31.6 percent. Incumbent LEC business data services revenues also declined from 2013 to 2015, while competitive LEC and cable competitor revenue grew rapidly. Level 3 revenues increased 66 percent, Comcast revenues grew by 46 percent, and Time Warner cable revenues increased by 73 percent over the same time period. For cable overall, business revenues have grown at a 20 percent compound annual growth rate. Notably, this revenue growth came in spite of falling prices, which likely indicates expansion of market output and/or demand shifts to higher bandwidth and thus more competitive services. Vertical Systems Group found that Carrier Ethernet pricing fell by double-digit rates for all services and speed segments from 2010 to 2015.

69. Some of the growth in cable's competitive position has come at the expense of incumbent and competitive LECs. AT&T, for example, calculates it ''lost *more than* [REDACTED] of its DS1 business from non-affiliates just between January 2013 and October 2015, and the rate of loss is accelerating.'' In addition, ''the number of new DS1 purchases from AT&T (*i.e.,* gross, not net, additions) declined by nearly [REDACTED] since the end of 2013.'' A degree of those losses were to Ethernet, as AT&T reports ''the number of new Ethernet purchases (*i.e.,* gross additions) during this period has more than [REDACTED]. Verizon reports that it sees similar competitive effects because of cable's increased entry into the business data services market. For example, comparing the same three-month period year-over-year Verizon saw a [REDACTED] percent decrease in Ethernet orders with its customers ''telling Verizon that trend will continue and worsen as they send more business to cable.''

70. *Decreasing Ethernet Prices.* There is persuasive evidence of recent decreases in the prices for packet-based services across all bandwidths. According to Cox, Ethernet prices have declined [REDACTED] or more between 2012 and 2016.'' ACA reports smaller cable operators have over the past five years ''decreased prices for their Ethernet services by approximately 50 percent on average across all geographic areas and for all customer segments—with some members reporting that prices have decreased even more, by 70 percent.'' Comcast observes ''steady year-over-year decline in [retail] pricing for dedicated Internet access and Ethernet transport services,'' *e.g.,* prices for its Ethernet Dedicated Internet service declined by [REDACTED] percent over the past 12 months. CenturyLink's Ethernet prices have on average, declined by [REDACTED] percent over the past five years.

71. Charter's monthly price for a 1 Gbps service as of the first quarter of 2016 [REDACTED]. Zayo reports price per unit decreases for GigE full rate (>1000 Mbps) from $3,300 to $2,800 from December 2013 to December 2015, about a 15 percent change. Per unit prices for fractional GigE (101–1000 Mbps) services decreased from $2,300 to $1,700 over the same period, a 26 percent drop.

72. Comcast once expected a price of between [REDACTED] per month in 2013 for its wholesale 100 Mbps fiber service but now charges less than [REDACTED] a month for the same service. Charter reports its ''average regional price of a 100 Mbps dedicated service'' was [REDACTED] per month in 2013 but by the first quarter of 2016, that per month price dropped to [REDACTED]. ACS has similarly experienced per month price declines for its [REDACTED]. Zayo's pricing trends show the monthly price per unit for Fast E Ethernet (10–100 Mbps) service decreasing from $1,300 to $1,200 (7.6 percent) from December 2013 to December 2015. CenturyLink reports prices for a 100 Mbps Ethernet backhaul circuit to a wireless tower have fallen [REDACTED] percent on average over the past five years.

73. There is also evidence that lower bandwidth packet-based services are experiencing price declines. For example, Legacy TWC's 10 Mbps service fell from [REDACTED] per month on average in 2013 to [REDACTED] per month by the first quarter of 2016, a 23 percent decrease. The company's 5 Mbps service decreased from a [REDACTED] monthly average to a [REDACTED] monthly average over the same period, a 28 percent change.

F. Incumbent LEC Pricing Regulation

74. We consider a large quantity of evidence in the record. A body of evidence particularly relevant to the foregoing discussion considered the benefits of current incumbent LEC price regulations. The evidence is mixed and we find does not in most locations support continued, much less additional, price regulation. Econometric studies performed by Dr. Marc Rysman, Commission staff, and commenters examined the relationship between incumbent LEC prices and the number of business data services competitors they face near a customer location. Based on the Commission's *2015 Collection,* the Revised Rysman Paper showed that incumbent LEC DS1 and DS3 prices were a statistically significant three percent and ten percent lower, respectively, in census blocks with one or more facilities-based competitors. However, these price changes often became statistically insignificant after implementing changes to the analysis in response to peer reviewers, suggesting that the data are too noisy to draw any firm conclusions.

75. Furthermore, as recognized by Dr. Rysman, and noted by peer reviewers and other commenters in the record, data and modeling limitations did not allow for a definitive conclusion that incumbent LECs were not pricing competitively. Despite Dr. Rysman's detailed analysis, a causal relationship could not be ascribed to his estimates due to the possibility that some factor not observed in the data (*e.g.,* lower costs of serving a given customer) could be simultaneously producing both a greater number of facilities-based competitors and lower prices. Further, while some (disputed) evidence was presented of incumbent LEC prices being lower where there was competition, other evidence was presented of dramatic increases in competitive entry, rapid price declines, and service growth. Moreover, analysts and forecasters expect strong competitive growth over the next decade in business data services, and we find that, all else equal, competitive growth will occur exactly where supracompetitive pricing is most prevalent.

76. *Current Prices at Cap.* In the *Further Notice,* the Commission suggested that ''the fact that the price capped incumbent LECs have kept their prices at the top of the cap is additional evidence of market power.'' Commenters are at odds over whether the lack of or minimal headroom between prices and the caps indicates the possession of market power. However, we disagree that prices at the cap demonstrate that incumbent LECs generally would have set materially higher prices wherever their prices were capped and that prices for business data services will increase significantly as a result of our actions in this Order. We expect that competition will continue to keep prices in check. Moreover, as we explain in our analysis of potential catch-up adjustments, the X-factors that were in effect between 1997 and 2005 may have been unreasonably high and therefore the current price cap indices may be too low. In view of these circumstances and our findings of competition in the business data services DS1, DS3, and transport markets, we find any concern about a

lack of headroom between prices and the caps to be unwarranted.

G. Competition in the Transport Market

77. Transport services are typically higher volume services between points of traffic aggregation which can more easily justify competitive investment and deployment. The Commission has traditionally regulated TDM-based special access services in two distinct segments: End user channel terminations and dedicated transport; and other special access services. The provision and sale of TDM-based special access services has reflected, and continues to reflect, the different competitive dynamics that characterize the two sets of services. When the Commission adopted the *Pricing Flexibility Order,* it distinguished between these two sets of TDM special access services and required price cap LECs to make different levels of competitive showings to obtain pricing flexibility for each. The Commission's pricing flexibility rules also reflect this distinction. Section 69.709 of the Commission's rules governs the grant of pricing flexibility for special access services other than the channel termination between the LEC end offices and customer premises, which includes interoffice facilities and channel terminations between an incumbent LEC's serving wire center and an IXC. Section 69.711 of the Commission's rules governs the grant of pricing flexibility for channel terminations between LEC end offices and customer premises. All of these elements comprise the service provided to the end user. The *Further Notice* followed the Commission's precedent by defining dedicated service as a service that ''transports data between two or more designated points'' and aspired to create a ''framework [that] reflect[s] how the market operates today.''

78. Commenters, including competitive providers, support maintaining this distinction. Dr. Rysman also acknowledged the relevance of this distinction in his paper. This distinction is rooted both in the different functionalities these sets of services deliver and in the different rate elements price cap carriers use to price these services. We find that this distinction remains valid in the current special access marketplace and employ it in our approach to reforming our regulation of TDM transport services.

79. In analyzing the competitiveness of TDM transport services, based upon the *2015 Collection* and the record, we find strong evidence of substantial competition, as well as market conditions that suggest regulation of TDM transport and other non-end user channel termination services is not justified. Indeed competition for such services has been robust since a large proportion of TDM transport services were deregulated. As Frontier explains, a ''substantial majority of transport revenue has been covered by Phase II pricing flexibility since the early 2000s.'' AT&T further states that ''the data collection strongly supports nationwide *Phase II* relief for transport.'' It cites data showing the widespread deployment of competitive transport networks, including the fact that ''as of 2013, competitive providers have deployed competing transport networks in more than 95% of census blocks with special access demand (and about 99% of business establishments are in these MSAs).'' Although INCOMPAS asserts that Commission rules requiring certain incumbent LECs to provide unbundled transport services is evidence of underlying market power, the record overall reflects a competitive landscape where customers often combine competitive transport with channel terminations supplied by incumbents. According to CenturyLink, it uses incumbent LEC transport facilities for ''less than half'' of the end user channel terminations it purchases as a competitive provider outside of its incumbent footprint. Moreover, data from the *2015 Collection* show that ''the vast majority of locations with special access demand have'' competitive fiber within close proximity. AT&T identified a number of major urban areas that had as many as 28 competitive transport providers and cited a number of second tier MSAs which commonly have ''over a dozen separate competitive transport providers.''

80. Competitive providers are split on the question of whether the transport market is competitive. XO, before becoming part of Verizon, found ''considerable competition for transport'' and that ''numerous CLECs frequently are collocated in the offices where XO is located.'' Other competitive providers dispute the competitive nature of transport services and assert that incumbent LECs are able to charge supracompetitive rates for TDM transport services and should therefore be price regulated. For example, Sprint alleges that ''along many routes, competitive providers are simply unavailable'' and asserts that competition for transport service is the exception rather than the rule. However, Sprint provides no data or anecdotal evidence to support its assertion and to rebut the evidence from the *2015 Collection* and from incumbent LEC commenters that show that competitive transport is available in the vast majority of census blocks in MSAs. As AT&T states, ''[n]o party to this proceeding has attempted specifically to make a case that there is a lack of competition for transport, and certainly not on a national basis.''

81. Evidence of competitive providers investing in transport services, rather than purchasing from incumbent carriers, reinforces our observations. While business data services providers may choose to purchase transport—either as a long-term solution to reach a customer or a temporary cost while implementing self-provisioning plans—many have deployed transport instead of buying the service.

82. More broadly, we understand that transport service represents the ''low-hanging fruit'' of the business data services circuit, which makes it particularly attractive to new entrants. In the *Pricing Flexibility Order,* the Commission noted that competitors often enter the transport market before the channel termination market, and we continue to adhere to that view. The net present value of the cash flows associated with the relatively high expected per-unit cost of deploying a new, relatively low-capacity channel termination and the expected revenue derived from the sale of that channel termination, especially for DS1 and DS3 channel terminations, would be expected to be significantly less than the relatively low expected per-unit cost of deploying a new, relatively high-capacity inter-office transport facility, and the expected revenue derived from the sale of that facility. Thus, in the face of increased demand for transport services, we observe responsive market conditions that support the deployment of competitive facilities, through either new entry or conversion.

H. Conclusions

83. *Packet-based Services.* Packet-based services represent the future of business data services. We believe the higher bandwidth capabilities of these services will lead to greater returns on investment and in turn, greater incentives for facilities-based entry into the business data services market. In contrast, DS1s and DS3s are legacy services that now compete against packet-based broadband services such as EoHFC services in the same geographic market. We find this competition, or potential competition between legacy and packet-based services, sufficient enough to discipline pricing. In many instances, incumbent LECs are now on similar footing to entrants (even if they may still on

average be advantaged), as they often also deploy new facilities to meet customer demand (because even a relatively low demand customer today may not be a low demand customer tomorrow, and copper loop generally is incapable of meeting higher demands). As a result, we find the marketplace for packet-based business data services is competitive.

84. *TDM-based DS1s and DS3s.* Within the broader record, we acknowledge that, by the nature of legacy services, incumbent LECs have a degree of concentration in certain geographies for DS1 and DS3 services. We also recognize a changing industry with increasingly competitive options, particularly at higher bandwidths, and a decreasing demand for these legacy services. Our analysis suggests that any prior advantage an incumbent might have enjoyed at lower bandwidths is now less competitively relevant in light of customer demand that attracts a number of traditional and non-traditional competitors that are improving legacy cable networks and expanding with new facilities to meet demand. This is further supported by the degree of sunk investment made by traditional and non-traditional providers of business data services to compete. We conclude that incumbent LEC market power has been in many cases largely eliminated, and elsewhere is declining thanks to increased competition in business data services markets.

85. *Transport.* Based on the *2015 Collection,* the record, and our market observations, we find substantial evidence of competition in TDM-based transport markets, which, accordingly, suggests that price regulation is not required. For these reasons, we conclude that TDM-based transport is competitive.

IV. An Administrable Framework for Business Data Services Grounded in Our Market Analysis and the Record

86. We intend to apply ex ante rate regulation only where competition is expected to materially fail to ensure just and reasonable rates. As a matter of policy we prefer reliance on competition rather than regulation, wherever purchasers can realistically turn to a supplier beyond the incumbent LEC. Based on these principles and our market analysis, we find regulation is unnecessary for packet-based services, TDM transport services, and higher bandwidth (*i.e.,* above DS3) TDM end user channel terminations. We also conclude that we should refrain from ex ante pricing regulation for TDM end-user channel terminations in areas deemed competitive. We then outline a bright-line competitive market test for initially determining whether a given price cap area will be treated as competitive in the provision of DS1 and DS3 end user channel terminations and certain other business data services by the incumbent LEC. This test will treat as competitive a particular county if 50 percent of the locations with BDS demand in that county are within a half mile of a location served by a competitive provider based on the *2015 Collection* or 75 percent of the census blocks in that county have a cable provider present based on the Commission's Form 477 data. Any price cap incumbent LEC serving special access customers within that county will be relieved of ex ante pricing regulation. Furthermore, we adopt a process for regularly updating the list of competitive counties in a way that accounts for changing competitive conditions but also avoids the need to undergo burdensome data collections.

A. Regulatory Framework Applicable to Packet-Based Business Data Services and to TDM-Based Services Providing Bandwidths in Excess of a DS3

87. After reviewing the record and considering the Commission's goals to ensure that rates for business data services are just and reasonable, while also encouraging facilities-based competition and facilitating technology transitions, we decline to re-impose any form of price cap or benchmark regulation on packet-based business data services or on TDM-based services providing bandwidths in excess of the level of a DS3, and we eliminate that regulation to the extent it exists today. In so doing, we impose no new regulation on the packet-based and higher capacity TDM-based business data services marketplace, which will be free from ex ante pricing regulation, regardless of the type of entity providing the service. Our market analysis does not show compelling evidence of market power in incumbent LEC provision of these services, particularly for higher bandwidth services. Moreover, even if the record demonstrated insufficiently robust competition, proposals to apply price cap regulation to packet-based services were complex and not easily administrable and did not reflect the fact that costs to serve individual customers vary. Likewise, we decline to impose benchmark pricing regulation on incumbent LEC packet-based business data services or on TDM-based services of bandwidths in excess of the level of a DS3. Because our market analysis shows that such services are subject to competition, anchor or benchmark pricing is unnecessary and could in fact inhibit investment in this dynamic market by preventing providers from being able to obtain adequate returns on capital. Additionally, the benchmark pricing proposals in the record were administratively complex and unlikely to reliably result in just and reasonable rates.

88. We further find that packet-based services are best not subjected to tariffing and price cap regulation, even in the absence of a nearby competitor. Packet-based services represent the future of business data services and are readily scalable, so competitive LECs are generally very willing to deploy such services beyond their footprints because they can expect to earn increasing revenues from their initial investment with few additional costs. In contrast, the record shows that competitive LECs are generally unwilling to extend their legacy TDM networks, especially beyond a half mile to provide DSn services. Consequently, entrants are better placed to win customers in packet-based markets than in those for TDM services. Packet-based services are new services, experiencing both rapid growth, and rapid change in standards, throughput and usage, and so regulation is more likely to impose long-term costs by dissuading providers of packet-based services from entering.

89. We do, however, remind stakeholders that packet-based telecommunications services remain subject to the Commission's regulatory authority under sections 201, 202, and 208 of the Act. These statutory provisions allow the Commission to determine whether rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory in the context of a section 208 complaint proceeding.

B. Regulatory Framework Applicable to TDM Transport Services

90. We eliminate all ex ante pricing regulation of price cap incumbent LEC provision of TDM transport and other transport (*i.e.,* non-end user channel termination) special access services. The *2015 Collection* and the record demonstrate widespread competition in the market for these services and generally support using a deregulatory approach for TDM transport and other non-end user channel termination services.

91. We conclude that competition for TDM transport services is sufficiently pervasive at the local level to justify relief from pricing regulation nationwide. Commission staff analysis of competitive provider responses to question II.A.5. of the *2015 Collection*

shows that in all price cap territories, 92.1 percent of buildings served were within a half mile of competitive fiber transport facilities. Additionally, for all census blocks with business data services demand, 89.6 percent have at least one served building within a half mile of competitive LEC fiber. As we concluded in the foregoing market analysis, the presence or reasonable proximity of a single competitor's facilities represents competition given the high sunk cost nature of the business data services market. Our data are conservative given the fact that the *2015 Collection* includes only a subset of all hybrid fiber coax facilities deployed by cable providers (*i.e.,* only Metro-Ethernet headend-connected fiber feeder plant) and given that the *2015 Collection* data are from 2013 and therefore necessarily understate the level of actual competition for transport services by not including competitive facilities that have since been deployed. We find that the high percentage of locations within a half mile of competitive fiber and the high percentage of census blocks with at least one building within a half mile of competitive fiber justify our refraining from applying pricing regulation across all price cap areas to TDM transport services.

92. We recognize that our decision in all likelihood will leave a relatively small percentage of census blocks (with an even smaller percentage of overall demand) price deregulated and without the immediate prospect of competitive transport options. However, greater harm—primarily manifested in the discouragement of competitive entry over time—would result if we were to attempt to regulate these cases than is expected under our deregulatory approach. In contrast, lower entry barriers for deploying transport services than for end user channel termination services and increasing demand for transport means that regulatory relief will provide incentives for competitive providers to deploy additional transport facilities to compete for this demand. While competition may not be universal, it is sufficiently widespread for us to have confidence that a combination of these factors will broadly protect against the risk of supracompetitive rates being charged by price cap LECs over the short- to medium-term. To the extent there are points of aggregation that are not served by competitors, the relatively high demand at these points makes it likely that a competitor could justify investing in competitive transport facilities to serve that demand.

93. Moreover, our goal is not absolute mathematical precision but an administratively feasible approach that avoids imposing undue regulatory burdens on this highly competitive segment of the market. Refraining from pricing regulation for transport services nationally achieves the proper balance between precision and administrability. It also avoids unnecessary disruption of existing special access transport sales arrangements. The alternative would be to impose significant regulatory burdens on all participants in the market with an additional layer of regulatory complexity that would undermine predictability and ultimately hinder investment, including in entry, and growth. Instead, we believe that providing regulatory relief in this market segment will foster conditions that will continue to encourage competitive entry and provide incentive for further investment in fiber transport facilities. Finally, our section 208 complaint process represents a continuing safeguard against unjust and unreasonable rates.

C. Competitive Market Test Criteria for DS1 and DS3 End User Channel Terminations

94. As noted above, we decline to impose ex ante pricing regulation for packet-based business data services and eliminate entirely ex ante regulation for TDM-based services providing bandwidths in excess of a DS3 and for TDM-based transport services. Based on the record, we have determined that such forms of regulation are not necessary because we expect that competition will ensure just and reasonable rates for those services.

95. At the same time, many commenters have urged us to take a different approach with respect to ex ante regulation of DS1 and DS3 end user channel terminations that use legacy, circuit-based technology. They raise various arguments about why they believe this portion of the business data services market requires that we not eliminate ex ante price regulation altogether. To the extent commenters suggest that there are no circumstances in which we should eliminate ex ante pricing regulation, we disagree with those contentions. Our decision in this Order will promote investment, deployment, and competition in the business data services market in a way that will benefit all end users, including those that currently use DS1s and DS3s.

96. We determine it is appropriate to take a different approach with respect to the elimination of ex ante pricing regulation of legacy, circuit-based DS1 and DS3 end user channel terminations. The market for these services is declining as customers opt for more flexible packet-based business data service offerings. Moreover, the economics of deploying facilities to end user locations makes competitive entry in response to demand less likely than with the TDM transport market segment, which is typically at higher-bandwidths and requires less investment per unit of traffic than required for channel terminations. In light of these considerations, we are providing additional protections for this portion of the business data services market as the market transitions to new technologies by not eliminating ex ante pricing regulation in every area. Instead, we adopt a competitive market test that will preserve ex ante price regulation in those limited number of areas where we predict there is a substantial likelihood that competition will fail to ensure just and reasonable rates. In addition, even in those areas where we eliminate ex ante pricing regulation, the protections of section 208 will continue to apply.

97. Specifically, the competitive market test we adopt today assesses the availability of actual and likely competitive options in the provision of last-mile services and subjects to ex ante pricing regulation only circuit-based DS1 and DS3 end user channel terminations and certain other business data services provided by price cap incumbent LECs in areas the test finds lack a competitive presence. We base the competitive market test on the geographic unit of a county or county-equivalent (hereinafter, county) which significantly reduces the over- and under-inclusivity issue posed by MSAs which the Commission highlighted in the *Suspension Order* and avoids the administrability issues posed by smaller geographic units of measure. The test uses data demonstrating the presence of competitive facilities from the *2015 Collection* in combination with the most recent data on cable deployment from the Form 477 data collection to determine which counties to regulate.

98. While there is no clear consensus in the record on the right approach to the competitive market test, we do see a few points of general agreement. The various proposals use bandwidth demarcation points and competition test criteria based on counting providers in or near a geographic area using the *2015 Collection* data. Beyond those few high-level points of agreement, there are vast differences of opinion among commenters on the current state of competition in the marketplace, on the need for a competitive market test, and on what a competitive market test should entail. Generally, competitive

LECs needing to purchase business data services as inputs at wholesale, mobile wireless providers not affiliated with an incumbent LEC, Windstream and Verizon (both net buyers), and end-user representatives, such as Ad Hoc, interpret the *2015 Collection* as largely showing a non-competitive market, requiring regulatory intervention at all but the highest service bandwidth levels, *i.e.,* in excess of 1 Gbps. On the other side, cable companies and competitive fiber providers that do not typically purchase business data services at wholesale, AT&T, and other incumbent LECs (net sellers) see a highly competitive marketplace with no need of regulatory intervention.

99. The test we adopt utilizes certain core attributes of a test on which there was consensus in the record, including establishing a threshold number of providers to find competition, employing a defined geographic area of measurement, and basing the test on data from the *2015 Collection* and updating the results of the test to ensure they continue to reflect the extent of competition in the market. That said, it also represents a departure from some of the proposals in the *Further Notice* in that rather than focus on burdensome pricing regulation, it takes a dynamic and forward-looking approach to evaluating the benefits and costs of regulation. The test will be updated periodically by relying on data the Commission routinely collects, so it does not require additional and potentially burdensome data collections. We find this approach strikes a reasonable balance between precision and administrability, will encourage continued investment in and deployment of business data services, and will foster a market-driven transition from legacy circuit-based services to newer packet-based services and other technologies.

100. We take a pragmatic approach to formulating a competitive market test by considering what data are available to us to evaluate competitive conditions both at present and in the future. We then determine what geographic unit is sufficiently granular and at the same time administrable for the Commission as well as the industry. Finally, we consider which criteria best reflect competitive conditions in the market while still furthering the Commission's policy objectives. The ultimate goal of the test, however, is not to definitively determine competitive market conditions but rather to determine on balance which areas are best positioned to benefit from price deregulation and which areas will benefit more from continued price cap regulation.

101. In determining where we can appropriately avoid applying ex ante price regulations for certain special access services, we balance the benefits and costs of such regulation. We recognize that in counties where there currently appears to be few competitive alternatives for consumers of DS1 and DS3 end user channel terminations that the benefits of ex ante price regulation likely outweigh the costs since this likely indicates broad entry in such regions may not occur. However, in counties where the competitive pressures are able to discipline prices for a large fraction of customers, as discussed in our market analysis, we see the opposite to likely be the case. Ex ante pricing regulation can have negative features. For example, in a county where entry is relatively widespread, the absence of entry in specific areas may be due to regulated prices inadvertently being set below competitive levels. Such prices make entry unprofitable, are harmful to long run incentives to invest, can lead to inefficient short run levels of production and consumption, and can prevent entry indefinitely. This counsels toward being especially wary of imposing price caps except where competitive service seems most unlikely to be available within a reasonable time horizon. This perspective of balancing the benefits and costs of regulating prices, as well as the importance of having an administrable system, leads us to adopt the framework discussed below. In our judgment, we expect this framework to appropriately balance our desire for fostering a dynamic and competitive marketplace with the need to ensure rates that are just and reasonable.

102. Some parties have expressed concern about a potential spike in prices in areas deregulated as a result of the competitive market test. We believe, however, the test adopted today strikes the appropriate balance to apply ex ante regulation where warranted and to allow competitive forces to thrive absent ex ante regulation where there is adequate competition. If prices were to rise following deregulation, then we anticipate that competition will work to drive these prices to competitive levels. Moreover, customers are protected in the near term from harm that would result from any rates, terms, or conditions that are unjust and unreasonable or unjust and unreasonably discriminatory because the Commission's section 208 complaint process continues to be available for common carriage services.

1. Availability of Data To Measure Competition

103. *2015 Collection.* The most intuitively relevant dataset in our toolbox is the one collected in response to the *Data Collection Order.* That data collection covered circuit- and packet-based business data services and required responses from providers of both dedicated and best-efforts last-mile access services (albeit exempting small providers of best-efforts services), as well as purchasers of business data services. In short, the data collection came as close as practicable at the time to providing a ''clear picture of all competition in the marketplace.'' Despite this, some commenters question the continued relevance of the data, citing cable providers' aggressive expansion into business data services since the data collection. These criticisms overstate the limitations of the *2015 Collection.* It is unprecedented in scope and remains a useful and appropriate basis for our new regulatory framework. That said, we acknowledge that while the *2015 Collection* is well suited for the initial evaluation of competition, it is unsuitable for measuring competition going forward. We also acknowledge that the *2015 Collection* does not fully capture the extent of cable deployment to date.

104. Although some commenters propose refreshing the data with periodic data collections, most commenters strongly oppose the idea as being too burdensome and even ''an obstacle to competition.'' To comply with the *2015 Collection,* for example, some carriers were ''forced to pull data manually from numerous billing and data systems, diverting limited time and resources from other critical projects.'' For an uncertain number of years, providers would be required ''to continuously track and maintain . . . all company documents that may be responsive . . . requiring business employees and counsel to devote significant resources to conduct broad searches for such documents and evaluate their responsiveness.'' We believe the costs of further data collections would not justify the benefits obtained from having updated data. Below we find that an alternative dataset can be used to update our competitive market test with no additional compliance burdens while still effectively capturing market competition as compared with a new more comprehensive data collection. We therefore decline to extend the *2015 Collection.*

105. *Form 477 Data.* In 2013, as the National Broadband Map data collection

was nearing its completion, the Commission issued the *Modernizing Form 477 Order,* which redesigned and updated the requirements first spelled out in the *2000 Data Gathering Order.* To comply with the Form 477 data collection requirements, all facilities-based fixed broadband providers, including cable operators, are required to report data on all census blocks where they make fixed broadband services available to residential and business customers at bandwidth speeds exceeding 200 kbps in at least one direction. Among other things, providers also report ''the maximum advertised speed for each technology used to offer service in each census block.'' The Commission collects these data semi-annually and makes the data available to the public.

106. We find the Form 477 data well suited for supplementing the *2015 Collection* in the initial analysis of market conditions and a conservative proxy for competitive deployment going forward. Form 477 broadband service availability data necessarily imply the presence of broadband-capable cable network facilities, which makes it an ideal dataset to ensure the competitive market test accounts for competition from cable operators. We recognize, however, that the Form 477 data do not measure the presence of other competitive providers. That being said, given the long-term sunk cost nature of competitive provision, it is unlikely that locations that were previously competitive (as evidenced in the *2015 Collection*) would become noncompetitive. The key question thus becomes whether the Form 477 data can be used as an updating mechanism, not merely for the extension of cable supply, but as a proxy for the extension of competitive end user channel terminations more generally. While the measure is unlikely to be perfect, we conclude the Form 477 portion of the competitive market test is a good match for the *2015 Collection* as a means of capturing future changes. Moreover, given cable operators' ongoing aggressive deployment of end user channel terminations, which dwarfs that of non-cable suppliers, it is highly likely the cable-only measure found in the Form 477 data will capture the vast bulk of additional deployments because it is likely that most non-cable competitive extension of business data services networks will occur where cable is also deploying or has already deployed. Importantly, these data are updated on a semiannual basis and, therefore, any periodic re-evaluation of competition in specific markets will always be relatively current. Moreover, because these data are collected by the Commission, we are confident in their integrity.

107. In fact, some commenters used Form 477 data to supplement the data from the *2015 Collection* in their analyses and proposed that we use it going forward. Other commenters, while advocating using Form 477 data, also suggested modifying Form 477 to replicate the *2015 Collection* going forward. We are reluctant, however, to impose additional reporting burdens on providers for the same reasons we rejected proposals to refresh the *2015 Collection,* and therefore decline to amend Form 477 to mirror the data gathered by the *2015 Collection.* We believe the data currently collected by the Form 477 is already well suited to the needs of the competitive market test. Further, we will implement sufficient safeguards to allow us to use Form 477 in its present state.

2. Appropriate Geographic Measure

108. In terms of granularity, our goal through the years of regulating the business data services market has been ''to define . . . geographic areas narrowly enough so that the competitive conditions within each area are reasonably similar, yet broadly enough to be administratively workable.'' After considering various possible geographic areas to use for the competitive market test, we conclude that basing the competitive market test at the county level strikes the best balance between being sufficiently granular and administratively feasible. We reject other proposals raised in the record, including use of MSAs, census blocks, census tracts, and ZIP codes.

109. *Counties.* As suggested by various commenters in the record, we agree that the geographic area we use for the competitive market test should be larger than census blocks or census tracks, but smaller than MSAs. We find that counties are granular enough to capture reasonably similar competitive conditions yet large enough to be administratively feasible and are supported in the record. Counties are significantly more granular geographic units than MSAs and thus reduce the risk of misidentifying competitive or noncompetitive geographic areas. Counties are subdivided into census blocks. Presently, there are 3,233 counties in the U.S., as compared to 389 MSAs, of which 204 had been granted pricing flexibility relief. Counties have another advantage over MSAs, in that MSAs do not cover all of the price cap incumbent LEC study areas, while counties do. Moreover, counties are a more stable unit of regulation than MSAs. While county boundaries occasionally change, and sometimes counties are split, or merged or new ones are created, such changes are relatively infrequent. For example, in the decade ending 2010, there were only two substantial county boundary changes, both in rural Alaska, and a merger of a county and a city. In contrast, MSA boundary changes are more frequent and far reaching. For example, in 2003, 41 counties were moved from an MSA to a micropolitan statistical area, and changes were made to statistical area boundaries in every state.

110. The Commission's *2015 Collection* shows an average of 376 buildings with last-mile access demand in a county, whereas the average number of buildings with last-mile access demand in an MSA is 2,713. This statistic shows that counties are much more granular geographic units for administering the competitive market test. Furthermore, using census data we can compare the number of firms and establishments and the employment levels in counties and MSAs. Those data also demonstrate that counties allow for a more granular analysis of competitive conditions than MSAs: [''Table 1. MSA-County Size Comparisons'' omitted].

111. Counties are also significantly less granular than smaller geographic units such as buildings, census blocks, census tracks, and ZIP codes, and, thus, significantly more feasible for the Commission and industry to administer. Use of counties has another advantage as well: Counties do not cross MSAs. Consequently, there is a ready translation of the FCC's pricing flexibility regime to counties, which will minimize disruption where a county's regulatory status is not changed by this Order.

112. Counties provide a convenient, natural administrative unit for capturing competitive effects, and competitive effects from cable operators in particular. The competitive presence of cable operators will generally conform to county boundaries since cable franchises have historically been awarded, with some exceptions, on a county-by-county basis. Cable operators may not provide cable service without a franchise from a franchising authority. A franchise authorizes the construction of a cable system over public rights-of-way, and through easements, within the area to be served by the cable system. Thus, a franchise license allows a cable operator to overcome many entry barriers associated with buildouts and creates more certainty in anticipated buildout revenues. With those hurdles

out of the way, it is in the cable operator's interest to build out an extensive network in the jurisdiction. Indeed, a cable operator's franchised cable system is often extensive throughout the franchised county.

113. *Metropolitan Statistical Areas (MSAs).* We conclude that MSAs are not well suited to be used as the geographic area for determining competitive effects. The Office of Management and Budget (OMB) developed MSAs for purposes of compiling statistics for a set of certain geographic areas, defining MSAs as ''geographic entities that contain a core urban area of 50,000 or more population, and often includes adjacent counties that have a high degree of social and economic integration with the urban core, as measured by commuting to work.'' Furthermore, ''OMB may add counties or principal cities to an MSA, remove them, or even create new MSAs.'' Although OMB periodically updates its list of MSAs to reflect changes in social and economic integration between urban centers and outlying areas, the Commission ''adopted a list of 306 MSAs based largely on data compiled from the 1980 census, and froze that list for use in all pricing flexibility petitions.'' Thus, even if MSAs were an appropriate geographic area for competitive analysis and regulation, the Commission's list of MSAs does not reflect the current state of population and business conditions. This circumstance has caused confusion among providers that have submitted petitions to the Commission containing data calculated using different MSA definitions.

114. In addition, MSAs are too large to reflect the scope of competition. Competitive LECs have consistently argued throughout this proceeding that the Commission's previous MSA analysis ''ignored the wide variability of competitive conditions across a large geographic area.'' The Commission agreed in the *Suspension Order,* analyzing business density in six MSAs and finding significant ''variance of competitive conditions within an MSA'' because ''[t]he resulting statistical entity can be large, including the entirety of distant counties if those counties contain exurban areas linked to the core by commuting behavior.'' Even some incumbent LECs that initially had argued for the continued use of MSAs eventually accepted the use of more granular areas.

115. *Buildings and Census Blocks.* Some commenters express a strong preference for regulation focused on individual buildings with special access demand and, as a compromise, propose to regulate on a census block level. While this level of granularity might be more precise, it creates a range of other problems. For one, buildings with demand is a constantly changing statistic as businesses expand or downsize. Census blocks are also subject to change as the Census Bureau revises its measurements. Another issue is the administrative burden metrics like these are likely to impose on providers and the Commission: There were 658,485 census blocks and 1,216,977 buildings with last-mile access demand reported in our data collection. As a practical matter, regulation at such a granular level is not administratively feasible, either for incumbent carriers, competitive providers or the Commission. It ''would inevitably lead to a patchwork of differing regulations from census block to census block (or from building-to-building).'' It would make it exceptionally difficult for regulated carriers to set prices subject to regulation in some areas and not in others and for competitive providers to analyze their opportunities to enter a market. Finally, it would significantly complicate the Commission's efforts to oversee business data services markets or to conduct enforcement proceedings that could potentially involve hundreds or even thousands of individual census blocks or buildings. We therefore conclude that the geographic scope of the competitive market test must be larger than buildings and census blocks.

116. *Census Tracts and ZIP Codes.* Others suggest the Commission use census tracts or, alternatively, ZIP codes to analyze markets in the competitive market test. Census tracts are statistical subdivisions of a county updated each decennial census. Based on the *2015 Collection* data, the median census tract had a land area of 1.71 square miles. U.S. Postal Service ZIP codes identify the individual post office or metropolitan area delivery station associated with mailing addresses. ZIP codes are also subject to periodic updates, and zip code boundaries can be difficult to obtain. Census tracts are less granular than census blocks but more granular than ZIP codes and MSAs; census tracts and ZIP codes are considerably more granular than MSAs. As of the 2010 census, there were 73,057 census tracts in the U.S. compared to 11,078,297 census blocks and 389 MSAs. In 2016 there were 33,120 five digit ZIP Code™ Tabulation Areas (ZCTA™) in the U.S. As with buildings and census blocks, the sheer number of census tracts and ZIP codes, along with their variability over time, significantly undermine the administrability of using them for the competitive market test for incumbent carriers, competitive providers and the Commission.

3. Appropriate Level of Competition

117. Upon examining the structure of the business data services industry and the record before us, we find that a combination of either one competitive provider with a network within a half mile from a location served by an incumbent LEC or a cable operator's facilities in the same census block as a location with demand will provide competitive restraint on the incumbent LEC that will be more effective than our legacy regulatory regime in ensuring rates, terms, and conditions are just and reasonable. Our conclusion that a ''nearby BDS competitor'' provides sufficient competition to forgo regulation of an incumbent LEC's provision of BDS is based on three findings: (1) A determination of the geographic scope within which a likely BDS provider can realistically compete with an incumbent LEC; (2) a finding that one such competitor in addition to the incumbent LEC provides a reasonable degree of competition in BDS supply; and (3) a finding that the benefits of such competition outweigh the potential unintended costs of regulation.

a. Effect of a Nearby BDS Competitor

118. The record in this proceeding indicates that providers actively compete for customers located within about a half mile from their networks by bidding on requests for proposals and sending their sales personnel to offer their services. When bidding on a contract, providers often ''have no way of knowing with any reasonable degree of certainty which other providers are capable of serving that customer over their own facilities'' and, therefore, when bidding on an RFP they ''make much rougher assessments of the possibility of facing competitive bids''—a dynamic that ''ensure[s] that the benefits of competition redound to all customers in an area where competitive facilities have been deployed, not just those who are located within a certain distance of a network, or that offer a certain level of revenues.'' Accordingly, we determine nearby competitive network facilities exert competitive pressure on incumbent LECs whether or not their network is within a half mile of a customer's location.

119. We further find that wireline providers of BDS are commonly willing to extend their existing network out approximately a half mile, and in some instances further, to meet demand. That is, the cost of meeting demand within

one-half mile, including the costs of network extension and customer connection, is usually less than the present value of expected net revenues that buildout to that location will entail. This is true for cable companies who today are major and aggressive business data services suppliers. For example, in 2013 cable already supplied BDS, largely over fiber facilities, to more than one in ten locations with BDS demand, and may well reach 23.5 percent of locations today. We additionally assume as a reasonable approximation that a cable company competes for any BDS demand, or will do so within a few years, wherever it is supplying mass market broadband services over its own network, or will do so sometime over the next few years. We find this is so even for locations with BDS demand that are not currently connected to the cable company's network, and which may be more than a half mile from a fiber-node (because cable companies are actively driving fiber closer to all end users, and so extending fiber to a new location beyond that distance may be economic given broader network objectives). In sum, we find a wireline supplier is an effective competitor in meeting BDS demand at a location if it either delivers BDS to a location or has a network within one half mile of the location with BDS demand, and/or is a cable company with a widespread HFC network that surrounds the location with BDS demand. We hereafter refer to such competitors as nearby competitors, and to their networks as nearby networks.

b. Effect of a Single BDS Competitor

120. We find that, in the market for business data services, there is a substantial competitive effect when a wireline competitor is present to discipline rates, terms, and conditions to just and reasonable levels. We arrive at this conclusion because there is a general expectation that the largest benefits from competition come from the presence of a second provider, with added benefits of additional providers falling thereafter, in part because, consistent with other industries with large sunk costs, the impact of a second provider is likely to be particularly profound in the case of wireline network providers. A wireline provider is willing to cut prices to as low as the incremental cost of supplying a new customer, requiring minimal contribution to its sunk costs. In addition, we find that the presence of a nearby competitor is likely to prevent substantial abuse of market power, whether through high prices or lack of innovation, and equally that a lack of actual supply by a nearby competitor likely arises when existing suppliers' offerings are reasonable in both price service characteristics. That is, active supply occurs most rapidly in locations where the most profits are likely to be obtained, including where, for example, the transition to packet-based services is most valued. In other words, active supply is most likely to occur where the costs of missing competition are greatest. Equally, active supply is most likely to be postponed where the benefits of additional competition are small, because the potential profit gained from extending supply is small.

121. We reject some commenters' characterization of the *Qwest Phoenix Order* as a blanket finding by the Commission that two competitors are insufficient to constrain incumbent LEC pricing. Although the Commission raised concerns about the competitive nature of a duopoly in that order, it did not categorically reject the possibility that a market with two competitors could represent sufficient competition to restrain supracompetitive pricing by providers. To the contrary, it specifically recognized that ''under certain conditions duopoly will yield a competitive outcome.'' We find that the high sunk cost nature of the BDS market gives providers the incentive to extend their network facilities to new locations with demand even when those locations contribute revenue only marginally above the incremental cost of the network extension. In their comments, incumbent LECs substantiate this conclusion by citing substantial losses they have recently incurred, primarily to new entrant cable operators. They also provide examples of their responses to cable competition involving both price reductions and new service offerings. Reports by cable providers of significant year-over-year growth in their BDS revenues corroborate this story and show a shift in demand to higher (and more competitive) bandwidths.

122. We also distinguish our analysis here from that which the Commission employed in the *Qwest Phoenix* order. Although our competitive market test takes into account competition only from providers of copper, fiber, and coax last-mile facilities, in many locations there are likely more competitors present than the two captured by the test, such as providers of fixed wireless last-mile services, including providers of emerging 5G last-mile transmission technology, which promises to be widespread. Thus, technological changes that have occurred or are likely to occur in the near future make the Commission's reasoning in the *Qwest Phoenix* decision inapposite.

123. Some competitive LECs urge us to deregulate only locations with four providers (one incumbent LEC and three competitors) with last-mile connections in the building or in the census block. We find that such an approach would result in substantial overregulation of the business data services market and therefore we decline to adopt it. The primary driver of the number of connections at any location is the nature of demand in the location. We fully expect locations with a single customer to typically have only one provider. Even those locations with multiple customers may only have a single provider—the provider that won the bidding process to supply the location. However, as we explain above, the high sunk network cost nature of this industry indicates that even as few as two nearby providers have the incentive to undercut each other's price to win customers so long as they at least recover the incremental cost of extending supply to any customer. Accordingly, requiring even two, let alone three or four providers to be already supplying a given location as the rule for deregulation would result in overregulation in numerous locations that have competitive choice. This issue would become even more pronounced as wireline network providers compete for more locations. On the basis of the *2015 Collection,* deregulating locations with at least three (an incumbent LEC plus two other facilities-based providers) or four (an incumbent LEC plus three other facilities-based providers) suppliers would mean less than one percent of locations would be price deregulated and would re-impose price regulation on the vast majority of locations. Such a radical change would impose substantial regulatory costs on incumbent LECs—and consequently on small businesses, wireless carriers, and other consumers—and would dramatically reduce incentives for all carriers to build out next-generation infrastructure, which directly contravenes our goal of encouraging investment and innovation.

124. Though we believe the record is convincing on the impact of one nearby competitor ensuring reasonably competitive outcomes in the medium term (*i.e.,* over several years), even if it were not, the inability to draw firm conclusions from the data permits the Commission to make a predictive judgment regarding the impact of regulation on the market. Notwithstanding whether one nearby competitor is sufficient for a market to realize the substantive benefits of

competition, we note that the *2015 Collection* analysis did not permit a definitive conclusion on incumbent LEC market power. In addition, as demonstrated by the market analysis in this Order, the evidence in the record suggests significant competition for these business data services. We conclude the best policy to encourage competition is to refrain from ex ante pricing regulation when the competitive market test adopted in this Order is satisfied. We find this policy to be sound even if our market analysis does not result in the perfect regulation of every building in the country—for any administrable rule will necessarily be overinclusive in some cases and underinclusive in others. Consistent with our precedent, we conclude that competition is the preferred method of ensuring just and reasonable rates, terms and conditions and preventing unreasonable discrimination. Refraining from ex ante pricing regulation in these instances where we see active and likely medium-term competition developing is the most effective means of ensuring continued development of actual and robust competitive outcomes.

c. Potential Unintended Costs of Regulation

125. Finally, we find that there are substantial costs of regulating the supply of BDS and these likely outweigh any costs due to the residual exercise of market power that may occur in the absence of regulation. As a baseline, the presumption that ''[c]ompetition is best . . . because competition is the single best way of ensuring that customers benefit'' and the promotion of the same guides us. The question is not whether today nearby competition is everywhere fully effective, or even whether it will become so over the next few years. The question is whether the costs of the lack of fully effective competition, even as these decline over time, are likely smaller than the net costs of regulation.

126. Here we explain why we find that the net costs of regulation in the business data services industry are likely to be large, most especially because regulation is likely to undermine entry, potentially postponing the gains from competition for many years. Even well-crafted regulations have unintended consequences, inhibiting competition, reducing investment, and end user benefits. This is especially true in markets as highly dynamic and complex as those for BDS. In general, regulation discourages entry wherever it enforces prices that do not allow firms full cost recovery or raises the costs of entry. As the record before us indicates, both of these side effects are likely in BDS supply. Moreover, regulation in rapidly growing markets is riskier than in otherwise similar stable or stagnating markets.

127. First, it is very difficult for firms to set efficient prices when they must tariff and for a regulator to estimate the efficient price level in a business with the following characteristics: High uncertainty due to frequent and often large unforeseen changes in both customer demand for services and network technologies that are hard to anticipate and hedge against in contracts with customers; a complex set of products and services, which are tailored to individual buyers; costs of provision that vary substantially across different customer-provider combinations; and large irreversible sunk-cost investments that a provider is required to make before offering service. In these circumstances, efficient prices are often tailored to individual purchasers, and are often subject to renegotiations that account for changing circumstances. Moreover, in these circumstances, the efficient price level, which must be reflected in the price cap, is extremely difficult to determine, not least because it must reflect the option value of sinking network investments in a rapidly-changing environment. Both of these sources of regulatory error, especially failure in setting a price cap, can lead to prices that are too low which prevent entry (or alternatively prices that are too high which encourage excessive entry). For example, an inability to quickly adjust a tariff, means prices can be too low where they otherwise would be changed, while the restraints of tariffing can force a provider to set prices that are too low for some customers and too high for others, simply because of barriers to filing separate tariffs that allow such different customers to self-select into the option that suits them best. Similarly, price caps can force, through required averaging (such as the geographic average required in our price caps), prices that are too low in some locations and too high in others. The effect is to rule out entry in the former case, and to sometimes encourage inefficient entry in the latter. Moreover, price caps that are overall too low discourage entry (as well as long-run network reinvestment), which can have substantive knock-on effects on entry decisions given that supply in BDS is about recovering more than the incremental cost of each customer to pay for total network costs. Such negative effects accumulate over the life of the cap.

128. Second, given that most wireline network costs must be sunk for periods of between 20 years and sometimes two or more times that length of time, entrants and incumbents looking to reinvest are extremely sensitive to any increases in costs that might reduce their capacity to recover these costs. In particular, a small rise in costs that remains in place over a long time period can have a substantial impact on whether a particular investment opportunity is viewed positively. That is exactly what regulation does. It directly raises incumbent's costs, making them unwilling to invest and hence making them less effective competitors, and it creates an additional source of uncertainty that entrants must contend with when evaluating entry. If there is a small probability that future regulation will harm the entrant's projected income streams, then this can materially discourage entry (because over the course of the decades the expected present value of the accumulated harm can be large).

129. Lastly, we reiterate that ''the Commission should construct regulation to meet not only today's marketplace, but tomorrow's as well.'' Available metrics show the BDS market as dynamic, evolving rapidly, and becoming increasingly competitive across all service offerings. When a market is changing and growing, it offers tremendous opportunities to new entrants and therefore creates fewer regulatory concerns. Rather than only having the option of taking customers from existing suppliers by offering them very similar services, new entrants can seek unaffiliated customers, or tempt incumbents' customers away by offering new services that incumbents either do not offer, or if they do, are no more experts in it than the entrant (in fact, incumbents may be hampered by fears of cannibalizing their legacy services or by their cultures and other factors that suited the legacy world). In short, competition is likely to be more effective in dynamic growing markets than regulation. In addition, a high degree of flux greatly increases the chances that regulatory error will stifle competition and reduce welfare because it is applied to a circumstance that, without the regulation, may have quickly been overtaken by innovation and/or competition. Thus, regulation of such markets is generally considered to be counterproductive.

4. Competitive Market Test Methodology

130. In this section, we adopt the competitive market test methodology that we will use to determine which local markets are sufficiently competitive to warrant deregulation of price cap incumbent LEC provision of DS1 and DS3 end user channel terminations and certain other business data services. As we note above, we take a pragmatic approach to structuring the competitive market test, with the goal of promoting innovation and investment and recognizing recent trends and developments in the BDS marketplace. Furthermore, as also discussed above, we take a network-centric approach which takes into account the high sunk cost nature of BDS networks that gives nearby competitors a significant incentive to compete for potential clients within an economically buildable distance from their networks. This is the case for traditional competitive LECs and for newer entrants such as cable providers with extensive networks.

131. For the competitive market test to most closely approximate the realities of competition in the business data services market, it ideally should deregulate where there is competition and regulate where there is not. Accordingly, we can use the *2015 Collection* to measure the relative effectiveness of different competitive market tests at that point in time by assessing their respective error rates—*i.e.,* how often they fail to deregulate locations or census blocks that are competitive and how often they fail to regulate locations or census blocks that are not. A competitive market test with an appropriately weighted combination of such error rates will tend toward maximizing competitive effects and minimizing regulatory failure. However, we also consider the importance of minimizing regulatory disruption. In particular, we seek to be conservative in deregulation and reregulation, and we specifically decline to re-regulate counties that were previously granted Phase II pricing flexibility.

132. *Data.* Our first step in establishing a competitive market test is to use data from the *2015 Collection* to identify areas that are competitive. First, we use the location data in the *2015 Collection* to determine which buildings or locations with last-mile access demand are within a half mile of a location served by a competitor over its own facilities. We use a half mile distance based on our analysis of the record, discussed above, that determined that competitive providers are actively competing for customers located within that distance and are generally willing to build out that distance in response to business data services demand. We previously determined that two providers in the relevant market are sufficient to ensure competitive prices. Thus, all business locations with demand for last-mile access in a county that are within a half mile of a competitive provider's facilities are deemed competitive.

133. We supplement the *2015 Collection* data with additional and more current data from the Form 477 on broadband availability by cable providers which offers the best available and most current data on the sale of broadband services by cable providers and which is closely correlated with physical presence of cable networks. Data based on census blocks are very granular and therefore provide an appropriate measure on which to base our calculations for cable networks. Census blocks can be very small. If the median census block ''were a circle, then it would be approximately 0.2 miles across''—an area that can easily fit (and often does fit) a single building. Indeed, ''half [of all census] blocks are smaller than a tenth of a square mile (6.4 acres).'' Given the high sunk cost nature of cable broadband networks, we find when a cable provider is capable of providing Internet broadband service within any census block, then generally they have the incentive to make the incremental investment necessary to serve locations with BDS demand in that census block, especially over the medium term. Accordingly, we treat as competitive census blocks in price cap incumbent LEC study areas that the Form 477 data show have a cable presence—whether serving business or residential clients.

134. We conclude that it is necessary to base the competitive market test on data from both the *2015 Collection* and the Form 477 data collections since neither collection captures the full extent of competition. The *2015 Collection* includes data on traditional competitive LECs but only includes a portion of cable competitive facilities both because of the nature of the data reported and the fact that it does not capture cable competition that has emerged since the collection. The Form 477 data includes reasonably comprehensive data from which we can infer the presence of cable network facilities but does not provide comprehensive data on traditional competitive LECs. Because competitive LECs do not typically have locally ubiquitous networks, a report of supply by such a provider in a census block is less likely to mean they can extend their network to cover demand anywhere in the census block, so a traditional competitive LEC's Form 477 report of presence in a census block often is not a good indication whether it can readily extend service to other locations in that census block. Additionally, such providers may offer business data services in a block, but not supply broadband service as defined in the Form 477 data collection and not report that service for Form 477 purposes. Basing our test on both datasets will most closely approximate the full spectrum of competition in the business data services market, including competition from medium-term entrants. As we explain above, recent buildout by cable companies dwarfs that of traditional competitive LECs and, therefore, the *2015 Collection* is likely to closely reflect the state of traditional competitive LEC deployment as of 2013. To the extent the test does not capture some recent deployment by traditional competitive LECs, providers have recourse through a section 208 complaint process.

135. *Setting Appropriate Thresholds.* The next step in formulating the competitive market test is to use the highly granular data from both datasets to assess the accuracy of different combinations of thresholds we might adopt for the test. These datasets measure competition at very local levels—individual locations and census blocks. However, for administrative purposes we have chosen to use counties to apply regulation. Thus, we use these more granular data to assess competition at the county level. This entails a higher degree of imprecision than if we were to base the test on locations or census blocks (which would entail more burden and administrative cost). In particular, we do not require a county to be 100 percent competitive to deregulate it. Were we to require this, few counties, if any, would qualify. For similar reasons, we do not require a county to completely lack competition in order to regulate it. We acknowledge that by setting the percentage threshold at something less than 100 percent necessarily leaves a portion of businesses at non-competitive locations within a county deemed competitive without the near-term potential for competition. However, for the reasons discussed above, it is important not to overregulate, and thereby reduce incentives for competitive entry. Indeed, competitors, and particularly near-ubiquitous competitors like cable providers, have an incentive to build to

locations even beyond a half mile from their facilities, depending on cost and revenue opportunity. Conversely, setting a percentage threshold too low would also distort the results of the competitive market test by deregulating counties with only a relatively minor competitive presence, leaving a higher percentage of locations with business data services demand without the likelihood of a competitive option. Consequently, we apply our judgment to strike a balance in light of the data at our disposal.

136. We set percentage thresholds that result in a test that more accurately approximates competitive conditions in the county broadly. We set a separate threshold for each of the two datasets we use and note that, given the differences in the two datasets, the percentage thresholds will not be identical. Given the interdependency of the datasets, we analyze combinations of thresholds to assess their impact on the accuracy of our test and to determine which combination yields results with the lowest weighted error rates.

137. Utilizing the data from the *2015 Collection* and Form 477, we tested a variety of thresholds for both datasets. Any pair of thresholds regulates certain price cap counties and deregulates all others. This leads to two types of regulatory error that we can approximately measure using the *2015 Collection:* the first type of error occurs in regulated counties where there will be locations as of 2013 that were within a half mile of a location supplied over the facilities of a competitor (*i.e.,* wrongly regulated), while the second type of error occurs in deregulated counties where there will be locations that were not within such a distance (*i.e.,* wrongly deregulated). We measure these two types of errors by the number of locations in each category. Given the preceding, a natural way to proceed would be to seek a pair of thresholds that minimize some weighted sum of these two error counts.

138. Following our competitive analysis that revealed the high costs of regulating this industry, we could, for example, assign twice as much weight to the first type of error of regulating where we should deregulate (*i.e.,* wrongly regulating) as to the second type of error of deregulating where we should regulate (*i.e.,* wrongly deregulating). Such a measure would overstate the first type of error, regulating locations that should be deregulated. This would reflect the scenario where one thought that the burdens and costs of inappropriately regulating were twice those of inappropriately deregulating. For example, in Figure 2 a weight of 2/3 is assigned to a competitive building that is regulated and a weight of 1/3 is assigned to a noncompetitive building that is deregulated. The darkest blue area shows the range in which the weighted sum of errors takes its lowest values, while the darkest red area shows the range in which the weighted sum of errors takes its highest values. Taking this approach allows us identify the thresholds that minimize the weighted sum of these two errors. In particular, the appropriate thresholds given these weights would deregulate a county where 32 percent of buildings with BDS demand are within a half mile of a location supplied over competitive facilities or with 3 percent of census blocks with cable presence. [''Figure 2. Threshold percentage combinations (wrongly regulated locations given twice as much weight): Sum of Number of Buildings Deregulated without Competition and Sum of Number of Buildings Regulated with Competition'' omitted].

139. We next reverse these weights and instead assign twice as much weight to wrongly deregulated non-competitive buildings as to wrongly regulated competitive buildings. As the dark blue area of the contour map indicates, the appropriate thresholds for deregulating a county would be 48 percent for buildings with BDS demand within a half mile of a location supplied over competitive facilities and 23 percent for census blocks with cable presence. [''Figure 3. Threshold percentage combinations (wrongly deregulated locations given twice as much weight): Sum of Number of Buildings Deregulated without Competition and Sum of Number of Buildings Regulated with Competition'' omitted].

140. Alternatively, we can assign equal weight to both errors—that is, give both types of errors equal importance—then we would choose thresholds that minimize the simple sum of the number of buildings inappropriately regulated or deregulated. Figure 4 demonstrates that under this scenario the resulting thresholds would deregulate a county where about 47 percent of buildings with BDS demand are within a half mile from competitors' facilities as competitive or where about 11 percent of census blocks have cable facilities. [''Figure 4. Threshold percentage combinations (wrongly regulated and wrongly deregulated locations equally weighted): Sum of Number of Buildings Deregulated without Competition and Number of Buildings Regulated with Competition'' omitted].

141. This analysis suggests that setting a threshold of 32 to 48 percent for the *2015 Collection* would be reasonable. Out of an abundance of caution—we want to ensure that counties we deregulate will be predominantly competitive—we select the highest threshold—48 percent—and round up to 50 percent, which only slightly increases the error rate. Based on this threshold alone, we find that 1,862 or 59 percent of all counties and county equivalents in the United States that have some census blocks that are within a price cap study area would be treated as competitive, resulting in the deregulation of 91.1 percent of locations with special access demand. If we were to use this threshold alone, we estimate that 89.5 percent of locations with special access demand would be appropriately regulated, with 77,900 locations potentially over regulated and 48,045 potentially under regulated.

142. Our analysis suggests that setting a threshold of 3 to 23 percent would be one reasonable means of setting the trigger threshold for the Form 477 data. Nonetheless, we believe a more cautious approach is warranted for three reasons. First, we recognize that all but 8.9 percent of locations with special access demand are already deregulated by the half mile test—and *any* test using the Form 477 data will likely overlap substantially with the locations already targeted by that test. So any additional deregulation using Form 477 must be justified at the margin. Second, we recognize that deployment in any marginal counties targeted alone by the cable census block test is likely to be more sparse than in those targeted by the half mile test, and so the facility of cable deployment to any given location is likely to be somewhat less than in more concentrated areas. Third, we want to ensure that counties we deregulate—now and in future competitive market test updates—will be predominantly competitive in nature. Accordingly, we choose a more conservative approach and adopt a 75 percent threshold for the Form 477 data. With that threshold, an additional 17 or 0.5 percent of all counties and county equivalents would be treated as competitive, resulting in the deregulation of an additional 0.8 percent of locations with special access demand. We estimate that adding that threshold increases the percentage of locations appropriately regulated to 90.2 percent, with 8,367 locations more appropriately regulated. We note also that because Form 477 data encompass cable's best-efforts business data services, and this source of cable

competition is growing rapidly, we expect setting even a conservative threshold such as this one will result in further deregulation going forward.

143. We acknowledge that this competitive market test does not as perfectly delineate areas as we would like; yet we believe it strikes the right balance. It balances the need for precision against the need for a test that is feasible to administer, and also balances the benefits of appropriate regulation of competitive and non-competitive areas while seeking to avoid the costs of inappropriate regulation. It does not require additional data collections and yet closely approximates the results such data collections are likely to yield. It ensures that we adopt competitive thresholds that most closely approximate actual competitive market conditions and minimize regulatory error. It deregulates areas with sufficient potential for competitive entry in response to significant profit opportunities and retains ex ante pricing regulation in areas where competitors are less likely to be able to enter and therefore creates appropriate incentives for just and reasonable rates and continued growth, innovation, investment, and deployment in the dynamic business data services market. Lastly, it is conservative in deregulating, reflecting a desire to not move too quickly and recognizing the nascent nature of cable competition not captured in the *2015 Collection.*

144. We find that it is not necessary to create a special process or mechanism for challenging the results of the competitive market test. For administrability purposes, any such process would need to be limited to a single criterion, for example, the accuracy of the Form 477 data. The Commission has designed the competitive market test in a manner that reduces the need for, and the significance of, any post-decision challenge process because it has established very clear standards based on data that is readily accessible. In addition, we believe that parties can rely on the accuracy of the Form 477 data because it is certified to by company officials, compliance is subject to enforcement actions, and filers are required to submit revised data upon discovery of a significant error. Furthermore, commenters generally agree that the Commission should avoid establishing a separate process that is burdensome on the parties and the Commission. For example, NCTA urges the Commission to forego any extensive and involved challenge process such as in the Connect American Phase II universal service program that included more than 140 parties challenging the classification of nearly 180,000 census blocks and that took the Commission nine months to resolve. Accordingly, consistent with our goal of eliminating unnecessary administrative burdens, we conclude, based on the substantial administrative costs and apparently minor benefit, there is no reason to implement a challenge process here.

D. Updating Competitive Market Test Results

145. To ensure the results of the competitive market test continue to reflect competitive conditions in the business data services marketplace, we adopt a process for updating those results every three years using Form 477 data across all areas served by price cap carriers.

146. The results of the competitive market test offer a static snapshot of a dynamic and constantly changing business data services market. Most commenters that support the use of a competitive market test also support updating the test periodically. We therefore adopt an administratively efficient process that will periodically update the results of the test to govern the transition of a county from non-competitive to competitive status.

147. We base our initial application of the competitive market test on the two principle data sources we currently have at our disposal, the *2015 Collection* and Form 477. The Form 477 data are updated on a semi-annual basis and will therefore continue to be useful in measuring competition in subsequent updates to the test. The data in the *2015 Collection,* however, will become increasingly stale and therefore less relevant to actual market conditions in subsequent updates of the test. We agree with commenters that express concerns about the burdens such new data collections would entail. At this point, we find that the costs of such collections outweigh the benefits. The *2015 Collection* was the most comprehensive data collection the Commission has conducted, and the burden of conducting additional such collections, even if streamlined, would likely be considerable.

148. Moreover, we agree with commenters that the Commission ''does not need to issue a request for a broad, large-scale data collection as it did in 2012'' in order to obtain updated market data. We can instead use the existing Form 477 data collection, which would provide continuity with the initial test that also relies on these data. The Form 477 data on broadband availability are well suited to identify increases in competitive broadband deployment, particularly by cable providers which are the most likely sources of competitive growth. We conclude it is not necessary, as some commenters suggest, to modify Form 477 to request additional information. The current Form 477 data are sufficiently precise to capture the changes in competitive deployment that are likely to occur in a three-year timeframe. Thus we are able to achieve our goals of updating the competitive market test results using accurate data and at the same time avoid imposing any additional burdens on providers or the Commission.

149. We agree with commenters that support the suggestion in the *Further Notice* that the Commission reapply the test every three years. We find that the three-year period strikes the right balance between ensuring the competitive market test remains reasonably accurate and avoiding unnecessary disruption of sales arrangements and administrative burdens by overly frequent updates.

150. As Sprint explains, ''[three years] permits the Commission to evaluate whether markets are changing to become more competitive and will ensure that the regulatory framework reflects accurate information about the BDS marketplace.'' We disagree with commenters arguing for more or less frequent updates. More frequent updates are likely to be unnecessarily disruptive of longer-term business data services sales arrangements, while less frequent updates will be insufficient for the Commission to properly assess changes in the marketplace and to ensure the test remains current.

151. We direct the Wireline Competition Bureau to review Form 477 data on a regular three-year basis and determine whether any additional regulated counties meet the 75 percent threshold. The Bureau shall release a Public Notice that lists newly competitive counties and shall also provide this information on the Commission Web site. Parties desiring to challenge these results may file petitions for reconsideration or seek full Commission review through an application for review.

152. While commenters may disagree with how to update the initial competitive market test results, commenters widely note that the Commission should select administrative processes that are efficient. We note there are more than 3,100 counties in the U.S. that are included in our initial competitive market test computations. About 40 percent of these are treated as non-competitive and about 60 percent as competitive. We have previously noted

that, given the sunk and irreversible cost nature of business data services provision, it is unlikely that locations that were competitive, as evidenced in the *2015 Collection* and Form 477 data, would become noncompetitive. Sunk costs represent the biggest barrier to entry, and these data demonstrate that this barrier has been overcome. On the other hand, given the recent pace of technology, innovation, and the rollout of more efficient products in the business data services market, we are confident that competition will continue to grow in competitive markets. As a result, we find that the cost of reapplying the competitive market test for nearly 2,000 counties already treated as competitive would outweigh the benefit, if any. We thus decide we can achieve our objectives of adopting an administratively efficient process to update the competitive market test by reducing the number of counties subject to retesting. We shall update our test calculations only for the non-competitive counties to determine whether customers in these locations are benefitting from competition. Consistent with this approach, once a county is treated as competitive, it will not be retested.

E. Altering Business Data Services Forbearance

153. Prior forbearance actions and deemed grants have created a situation in which the statutory provisions and rules that apply to a price cap incumbent LEC or a competitive LEC in its provision of business data services vary depending on the provider's identity and the specific services being provided. We expand upon and adjust these prior actions and deemed grants to the extent necessary to level the regulatory playing field for all of these business data services providers. We also amend our rules as appropriate to implement our light-touch regulatory framework for business data services. These actions flow from—and are consistent with—our findings above on the intense and growing competition in business data services.

154. Our actions expanding forbearance are taken pursuant to section 10 of the Communications Act. That provision, enacted as an integral part of the ''pro-competitive, de-regulatory national policy framework'' established in the 1996 Act, requires that the Commission forbear from applying any provision of the Act, or any of the Commission's regulations, if the Commission makes certain findings with respect to such provisions or regulations. Under section 10(a), the Commission is required to forbear from any such provision or regulation if it determines that: (1) Enforcement of the provision or regulation is not necessary to ensure the telecommunications carrier's ''charges, practices, classifications, or regulations'' are ''just and reasonable and are not unjustly or unreasonably discriminatory;'' (2) enforcement of the provision or regulation is ''not necessary for the protection of consumers;'' and (3) forbearance is ''consistent with the public interest.'' In making this public interest determination, the Commission must also consider, pursuant to section 10(b), ''whether forbearance from enforcing the provision or regulation will promote competitive market conditions.''

1. Detariffing of Packet-Based Services and Circuit-Based Services Above the DS3 Bandwidth Level

155. We forbear from the application of section 203 of the Communications Act to each price cap LEC in its provision of any packet-based business data services or circuit-based business data services above the DS3 bandwidth level. This action expands upon prior forbearance grants and deemed grants applicable only to certain carriers and certain packet-based and circuit-based business data services.

156. In 2006, Verizon's Broadband Forbearance Petition was deemed granted by operation of law after the Commission did not act on it within the statutory time limit. That petition had sought forbearance from the application of Title II common carrier and *Computer Inquiry* requirements to ''all broadband services'' that Verizon ''does or may offer.'' But Verizon had subsequently narrowed the scope of its forbearance request to exclude DS1 and DS3 services. Following this deemed grant, AT&T, legacy Embarq, legacy Frontier, Qwest, and ACS filed petitions requesting similar forbearance relief. The Commission granted these petitions in part, finding that forbearance from the application of dominant carrier regulation, including tariffing under section 203, to the petitioning incumbent LECs' then existing packet-based and optical transmission broadband data services met the statutory forbearance criteria. These partial grants reflected the Commission's predictive judgment that, in comparison to traditional dominant carrier regulation and for the carriers' and services being addressed, ''eliminating the extra layer'' of regulation provided by tariffing and the Commission's ex ante pricing rules, ''while leaving in place basic Title II common-carrier regulation'' under sections 201, 202, and 208, ''will better promote competition and the public interest.'' The record here confirms this predictive judgment and supports expanding the prior forbearance to include additional carriers and services.

157. Currently the vast majority of business data services providers are not subject to section 203 in their provision of business data services—non-incumbent LECs are not required to comply with tariffing requirements, nor are the price cap incumbent LECs that have received forbearance to the extent they provide services within the scope of the forbearance grants and deemed grants. We find that the lack of regulatory parity that stems from the prior applications of forbearance is preventing competition and holding back our efforts to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'' Thus, our determination is based on ''what the agency permissibly sought to achieve with the disputed regulation,'' that is, to ensure that rates, terms, and conditions for the provision of these business data services are just, reasonable, and not unreasonably discriminatory. We find that ''in light of an overwhelming record of declining prices, it is simply not credible to argue that rate regulation is necessary to simulate competitive pricing'' for these services. Additionally, the lack of regulatory parity among broadband data services providers created by the imbalanced forbearance grants and deemed grants over the years has created barriers to entry and impeded competition. Extending forbearance from tariffing will lead to regulatory parity, and a more level playing field among packet-based and optical transmission business data services providers.

158. We further conclude that disparate forbearance treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers. Allowing such disparate application of our tariffing requirements undermines, rather than promotes, competition among telecommunications services providers within the meaning of section 10(b).

159. We predict that competition in the business data services market, along with the statutory and regulatory requirements that remain, is sufficient to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates, terms, and conditions by business data services providers and to protect business data services consumers. We therefore find that application of section

203 is not necessary within the meaning of sections 10(a)(1) and 10(a)(2). Those same considerations, plus our desire to promote competition and broadband deployment, likewise persuade us that such forbearance is in the public interest. Therefore, consistent with the Commission's prior findings, we find that forbearing from these regulations in an equal manner is consistent with the public interest within the meaning of section 10(a)(3).

2. Detariffing of Other Special Access Services

160. We also forbear from the application of section 203 to each price cap incumbent LEC in its provision of business data services elements that comprise transport pursuant to section 69.709(a)(4) of the Commission's rules, and to DS1 and DS3 end user channel terminations services and any other special access services currently tariffed in competitive counties or in non-competitive counties previously subject to Phase II pricing flexibility.

161. The Commission has previously recognized that ''tariffs originally were required to protect consumers from unjust, unreasonable, and discriminatory rates in a virtually monopolistic market, and that they become unnecessary in a marketplace where the provider faces significant competitive pressures.'' We find above that business data services transport is competitive throughout the nation and that DS1 and DS3 end user channel terminations services and other tariffed special access services are competitive in certain counties. Where a price cap LEC provides these services in competitive markets, application of section 203, including its tariffing requirement, is not necessary to ensure that the LEC's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory. Nor is application of section 203 necessary to protect consumers.

162. We recognize that in some discrete geographic areas, including portions of non-competitive counties previously subject to Phase II pricing flexibility, some customers may not have access to competitive transport services during the near-term. Similarly, in some portions of the counties that we classify as competitive, some end users may not have viable alternatives to the incumbent LEC's DS1 and DS3 end user channel terminations services and other special access services within that time frame. But even in these areas, we believe tariffing may reduce incentives for competitive entry and ultimately inhibit growth in the market and competition over the longer term. Additionally, price cap LECs will remain subject to sections 201 and 202, and to our enforcement of those provisions through the section 208 complaint process. In these circumstances, we find that the additional contribution that tariffing—and other ex ante regulation—of price cap LECs' special access services provides to protection against unjust, unreasonable, and unreasonably discriminatory rates, terms, and conditions is not necessary within the meaning of sections 10(a)(1) and 10(a)(2).

163. Those same considerations, plus our desire to promote competition and business data services deployment, likewise persuade us that forbearance is in the public interest. In competitive markets, tariffing has several adverse consequences, including reducing a carrier's incentives to offer price discounts and ability to respond quickly to changes in demand or costs, delaying and increasing the costs of innovation, and preventing a carrier from tailoring service arrangements to meet its customers' specific needs. Tariffing also imposes significant administrative costs on carriers and the Commission, and ultimately inhibits competitive entry in discrete areas where a price cap LEC currently may be the only provider. Given these costs, we find that forbearance from the application of section 203 to price cap LECs' business data services elements that comprise transport pursuant to section 69.709(4), and to DS1 and DS3 end user channel termination and any other tariffed special access services in competitive counties, is consistent with the public interest within the meaning of section 10(a)(3). We note that the record was supportive of detariffing services in competitive markets.

164. A small number of counties that had been regulated under Phase II pricing are now deemed non-competitive pursuant to our competitive market test. Incumbent LECs in these counties have been providing DS1 and DS3 end user channel termination and other special access services free of price cap, but not tariffing, regulation. Like we do for other services, we conclude that for these incumbent LECs tariffing's costs generally outweigh its benefits to consumers, and that forbearance from the application of section 203 to DS1 and DS3 end user channel termination and other tariffed special access services by these incumbent LECs in these counties is consistent with the public interest.

165. In contrast, we conclude it is not practical to detariff carriers that are now subject to—and will remain subject to—price cap regulation, where the tariff is the tool the Commission has used—and will continue to use—to enforce that regulation. This is not a concern with the counties now subject to Phase II pricing to the extent an incumbent LEC has not been subject to price cap regulation and, as we decide below, will not be subject to such regulation going-forward.

3. Transition Mechanisms

166. Our detariffing actions in this Order will be mandatory after a transition that will provide price cap incumbent LECs sufficient time to adapt their business data services operations to a detariffing regime. We also require that competitive LECs, which are currently subject to a permissive detariffing regime, detariff their business data services by the end of this transition.

167. The transition will begin on the effective date of this Order (sixty (60) days after **Federal Register** publication) and will end thirty-six (36) months thereafter, a period that we find sufficient for carriers to adapt to a detariffing regime. In addition, for six (6) months after the effective date of this Order, we require price cap incumbent LECs to freeze the tariffed rates for end-user channel terminations in newly deregulated counties, as long as those services remain tariffed. We adopt these transition mechanisms in light of the need for an adequate transition to ensure that small businesses will have time to adjust to the new regulatory conditions.

168. During this transition, tariffing for these services will be permissive—the Commission will accept new tariffs and revisions to existing tariffs for the affected services. Apart from the rate freeze noted above, carriers will no longer be required to comply with price cap regulation for these services, and once the rules adopted in this Order are effective, carriers that wish to continue filing tariffs under the permissive detariffing regime are free to modify such tariffs to reflect the new regulatory structure outlined in this Order for the affected services. This will allow carriers to respond to competitive pressures and introduce new business data services as they adapt to detariffing.

169. Carriers, including non-incumbent LECs, may remove the relevant portions of their tariffs for the affected services at any time during the transition, and the rate freeze does not apply to services that are no longer tariffed. Once the transition ends, no price cap incumbent LEC or competitive

LEC may file or maintain any interstate tariffs for affected business data services. This will prevent carriers from obtaining ''deemed lawful'' status for tariff filings that are not accompanied by cost support and invoking the filed-rate doctrine in contractual disputes with customers. Business data services providers will also be prevented from picking and choosing when they are able to invoke the protections of tariffs.

170. We recognize that our detariffing actions will change the legal framework for existing service arrangements for business data services, many of which assume a tariffing environment and may not expire until after the end of the transition to mandatory detariffing. We do not intend our actions to disturb existing contractual or other long-term arrangements—a contract tariff remains a contract even if it is no longer tariffed. In that vein, contract tariffs, term and volume discount plans, and individual circuit plans do not become void upon detariffing. Instead, we expect all carriers to act in good faith to develop solutions to ensure rates are just and reasonable.

4. Verizon Deemed Grant

171. In this section of the Order, we conform the forbearance provided to Verizon and its successors in interest, Hawaiian Telcom, and the legacy Verizon portions of FairPoint and Frontier (together the Verizon Legacy Companies), to the forbearance provided other price cap carriers. This action, when coupled with our other forbearance actions in the Order, levels the playing field among price cap carriers providing packet-based and optical transmission business data services as telecommunications services.

172. In 2006, Verizon's 2004 petition seeking forbearance from the application of Title II and *Computer Inquiry* requirements to certain of its enterprise broadband services was deemed granted by operation of law after the Commission did not act on that petition within the statutory time limit. We agree with those commenters that argue that we have statutory authority to reverse the deemed grant. Section 10 directs the Commission to ''forbear from applying'' statutory provisions and regulations to a telecommunications carrier when certain statutory criteria are met. We read the statute as giving us the authority to modify or reverse forbearance that has been deemed granted when we determine that one or more of those forbearance criteria are no longer met. Otherwise, forbearance based on the lack of a need to apply a statutory provision or regulation, and the public interest in such non-application, under one set of circumstances would remain locked in place even when circumstances change. Congress would not have intended to create such rigidity in enacting statutory provisions requiring ''Regulatory Flexibility,'' as section 10(a) is captioned. As the D.C. Circuit has observed, the Commission's forbearance actions—and the forbearance relief ''deemed granted'' to Verizon—are ''not chiseled in marble.'' Instead, the Commission may ''reassess'' that forbearance as it ''reasonably see[s] fit based on changes in market conditions, technical capabilities, or policy approaches to regulation'' of business data services.

173. We reject certain commenters' argument that statutory silence means that we lack authority to modify or withdraw forbearance once it is deemed granted, or that only Congress can modify or reverse forbearance received through a deemed grant. That argument largely rests on the D.C. Circuit's holding in *Sprint Nextel* v. *FCC* that the Verizon deemed grant ''did not result in reviewable agency action'' because ''Congress, not the Commission, [had] 'granted' Verizon's forbearance petition'' In so holding, the D.C. Circuit did not address the Commission's authority, under section 201(b), to adopt rules necessary ''to carry out the 'provisions of this Act,' '' which include each Title II provision encompassed within the Verizon deemed grant. Congress's determination in section 10(c) that forbearance will be ''deemed granted'' in the absence of timely agency action does not in any way limit our authority to later ''reassess'' the deemed grant as we ''reasonably see fit.''

174. We recognize that modifying or reversing forbearance once granted by the Commission or by operation of law is a step that should be taken with great care. We find this narrowly tailored action is appropriate in this case because such reversal is consistent with the substance of the statutory forbearance requirements. Verizon's forbearance from core Title II obligations came from the highly unusual circumstance of a deemed grant. Our partial reversal is consistent with the Commission's unanimous commitment, in the *AT&T Forbearance Order,* ''to avoid persistent regulatory disparities between similarly-situated'' carriers by issuing ''an order addressing Verizon's forbearance petition . . . on grounds comparable to those set forth'' in the *AT&T Forbearance Order.*

175. Notably, in its own comments in this proceeding, Verizon has recognized the importance of a level playing field in the business data services arena. The forbearance relief ''deemed granted'' to Verizon encompasses economic regulation that applies to all other common carriers, economic regulation that applies to all other incumbent LECs or Bell Operating Companies (BOCs), and public policy regulation that applies to all other common carriers. Continued forbearance from this regulation would be inconsistent with the statutory forbearance criteria. For example, as we find above, the protections provided by sections 201 and 202(a), coupled with our ability to enforce those provisions in a complaint proceeding pursuant to section 208, are necessary to protect against unjust, unreasonable, and unjustly or unreasonably discriminatory rates, terms, and conditions for those business data services. Similarly, section 251(b) imposes a number of duties on LECs, including the duty to implement number portability and the duty to provide competing telecommunications service providers with access to the LECs' poles, ducts, and conduits under just and reasonable rates, terms, and conditions. Acting to bring the Verizon Legacy Companies' forbearance into line with the forbearance granted to other carriers is necessary to ensure just, reasonable, and not unreasonably discriminatory rates, terms, and conditions for business data services provided on a common carrier basis, and is consistent with the Commission's decisions granting more tailored forbearance to other carriers.

176. Other provisions and requirements forborne from by the deemed grant promote access to telecommunications services by individuals with disabilities, protect customer privacy, and increase the effectiveness of emergency services, among other objectives. As the Commission previously found, these and other public policy requirements under Title II ''advance critically important national objectives'' and thus are necessary to protect consumers. Indeed, continued forbearance from these requirements would be inconsistent with the critical consumer-protection goals that led to their adoption.

177. We further conclude that disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers. Allowing Verizon and its successors in interest, but not its business data services competitors, to continue to avoid compliance with obligations applicable to other business data services providers would

undermine, rather than promote, competition among telecommunications services providers within the meaning of section 10(b). Therefore, consistent with the Commission's repeated findings, we find that applying these obligations to the Verizon Legacy Companies to the extent they provide business data services on a common carrier basis is consistent with the public interest.

V. Regulation in Non-Competitive Counties

178. We now turn to the question of what ex ante regulation, if any, we should apply to special access services in counties that are classified as non-competitive pursuant to our competitive market test. To ensure affordability of DS1 and DS3 services without unnecessarily constraining incumbent LECs' incentives to invest and innovate, we will apply price cap regulation in the form of Phase I pricing flexibility (Phase I pricing) to DS1 and DS3 end user channel terminations and certain other business data services provided by incumbent LECs in counties that we determine are non-competitive. Allowing Phase I pricing will enable incumbent LECs to timely and effectively respond to any competition that develops in these markets through contract tariffs and volume and term discounts. We also prohibit the use of overly restrictive non-disclosure agreements in contract tariffs for business data services sold in non-competitive areas.

A. Retaining Price Cap Regulation in Non-Competitive Counties

179. We conclude that, subject to the exception discussed below, we should continue to apply price cap regulation, as modified in this Order, to price cap LECs' DS1 and DS3 end user-channel terminations and certain other non-competitive business data services in non-competitive counties to ensure the rates, terms and conditions for such services are just and reasonable. We agree with the commenters—including Verizon, INCOMPAS, Sprint, Windstream, Ad Hoc, Birch et al., NASUCA et al., and Public Knowledge—that argue that price cap regulation is the most effective regime for ensuring that rates for non-competitive services are just and reasonable. The price cap system, as modified by the measures we adopt in this proceeding, will limit the extent to which price cap LECs can exercise their market power over the rates for TDM-based end user channel terminations in non-competitive counties.

180. When properly applied, price cap regulation replicates some of the beneficial incentives of competition in the provision of business data services while balancing ratepayer and stockholder interests. Price caps encourage LECs to become more productive and innovative by permitting them to retain reasonably higher earnings while discouraging wasteful investment. At the same time, price cap regulation offers regulated firms flexibility in setting relative prices, instead of relying on uniformed regulatory direction. In sum, price cap regulation helps ensure just and reasonable prices for customers in non-competitive markets while affording providers good incentives to reduce costs and an opportunity to earn a reasonable return on their investments.

181. We do not, however, require incumbent LECs that were previously granted Phase II pricing flexibility to reinstitute price caps in non-competitive counties that are within former Phase II pricing areas because we find that the costs of doing so exceed the benefits as described above. Incumbent LECs that have previously been granted Phase II pricing flexibility in these counties have been providing DS1 and DS3 end user channel terminations and other business data services free of price cap regulation for a number of years and have adapted their internal systems accordingly. Bringing these services back into price caps would require that incumbent LECs revamp their billing, information technology, and third-party management systems, at significant cost. Additionally, reinstituting price cap regulation would require the carrier to recreate what the price cap would be had it never received pricing flexibility, which would involve burdensome and complicated calculations. According to the *2015 Collection,* only 69 counties in former Phase II pricing areas are deemed non-competitive pursuant to our competitive market test, and these counties collectively have only [REDACTED] buildings with demand for end user channel terminations (only a portion of which is for DS1s or DS3s). We find that the costs of reinstituting price caps for carriers previously granted Phase II pricing flexibility in these counties outweigh the potential benefits. We also recognize that incumbent LECs in non-competitive counties that were not previously granted Phase II pricing flexibility would not have to bring services back into price caps, and therefore would not have the same costs. Therefore, these carriers will remain within the revised price cap system adopted in this Order.

182. To encourage competitive entry into the counties we have identified as non-competitive, we will not apply price cap regulation to DS1 and DS3 end user channel terminations provided by non-incumbent LECs. When a non-incumbent LEC provides DS1 or DS3 services in a non-competitive market, it typically does so in competition with an incumbent LEC that enjoys marketplace advantages, including a ubiquitous network and significant economies of scale. Extending price cap regulation to non-incumbent LECs would impose significant costs while generating few, if any, benefits. These costs would include administrative compliance costs that, by their very nature, would reduce the amount of capital available for the non-incumbent to upgrade its network and expand its business data services footprint to additional locations within the non-competitive county. Of greater concern, such regulation would reduce the non-incumbent's capacity to efficiently set prices and increase its exposure to regulatory risk, further leading to less competitive entry and investment. And, any benefits would be minimal since the incumbent LEC's price cap rates typically will set a ceiling on the rates the non-incumbent can charge for its DS1 and DS3 end user channel terminations.

B. Expanding Pricing Flexibility in Non-Competitive Counties

183. In 1999, the Commission established a process for granting price cap LECs pricing flexibility for special access services when specified regulatory triggers were satisfied. The pricing flexibility framework separates special access services into two segments, end user channel terminations and dedicated transport and special access services other than end user channel terminations, and provides two levels of pricing flexibility relief for each segment. Phase I relief gives price cap LECs the ability to lower their rates through contract tariffs and volume and term discounts, but requires that price cap LECs maintain their generally available price cap-constrained tariff rates to ''protect[ ] those customers that lack competitive alternatives.'' Phase II relief permits a price cap LEC to raise or lower its rates throughout an area, unconstrained by price cap regulations.

184. Business data services remaining within price caps after this Order will consist largely of incumbent LECs' DS1 and DS3 end user channel terminations in non-competitive counties, but will also include various other price cap

services that carriers decide to keep regulated pursuant to price caps during the transition to mandatory detariffing. Consistent with the proposal the Commission made in the *Further Notice,* we transition all business data services that remain subject to price caps into Phase I pricing. This will provide price cap LECs with flexibility while precluding them from charging above-cap rates in non-competitive counties. Price cap LECs in non-competitive areas will be able to negotiate individualized rates through contract tariffs and volume and term discounts. Those LECs must maintain generally available tariff rates subject to price cap regulation for end user DS1 and DS3 channel terminations, and other special access services included in their price cap tariffs in non-competitive counties that are not subject to the regulatory relief provided in this Order.

185. The record is clear that contract tariffs benefit both customers and price cap LECs. As Ad Hoc observes, Phase I pricing flexibility allows price cap LECs to respond to competition by negotiating lower contract rates. This flexibility, when coupled with our requirement that price cap LECs choosing to exercise Phase I pricing flexibility remove contract revenues from the relevant price caps basket for purposes of determining their price cap indices and actual price indices, will protect customers that do not negotiate contract tariffs from cross-subsidizing those that do. And the requirement that carriers maintain generally available price cap-constrained tariff rates will ''protect those customers that lack competitive alternatives'' against unreasonably high rates. We therefore amend our price cap rules to allow all price cap LECs in non-competitive counties to lower their rates through contract tariffs and volume and term discounts in a manner consistent with the Commission's current Phase I pricing flexibility rules. Accordingly, these incumbent LECs will be required to maintain generally available tariffs offering price cap regulated rates available to all subscribers.

186. These requirements will not apply to carriers within former Phase II pricing areas that are deemed non-competitive pursuant to our competitive market test that were previously granted Phase II pricing flexibility. Instead, current Phase II price cap LECs in these non-competitive counties will be required to continue offering its current generally available rates for end user DS1 and DS3 channel terminations and for the other special access services as long as those services remain under tariff. This requirement will cease once the services are detariffed.

C. Prohibiting Non-Disclosure Agreements in Non-Competitive Areas

187. In order to ensure that purchasers of business data services can fully participate in Commission proceedings and that the Commission can conduct appropriate oversight of business data services, we adopt a rule prohibiting the use of non-disclosure agreements in tariffs, contract tariffs, and commercial agreements for business data services provided in non-competitive areas that forbid or restrict disclosure of information to the Commission. In the interest of protecting sensitive information, a provider may require that information related to its business data services be submitted to the Commission subject to a Commission protective order or, if there is none, with a request for confidential treatment pursuant to the Commission's rules.

188. We agree with commenters that argue that non-disclosure agreements affecting the provision of business data services in non-competitive areas that restrict parties from disclosing commercially sensitive information to the Commission deter parties from sharing information with the Commission. The use of such non-disclosure agreements has been described as ''ubiquitous'' and their impact significant. Such non-disclosure agreements hinder the Commission's access to data important to its oversight of the business data services market and its ability to effectively discharge its core statutory responsibilities under sections 201 and 202. The Commission previously observed in another proceeding that ''overly broad, restrictive, or coercive nondisclosure requirements may well have anticompetitive effects'' and explained that ''demands by incumbents [for such non-disclosure agreements] . . . are of concern and any complaint alleging such tactics should be evaluated carefully.''

189. We find misplaced AT&T's assertion that the *Further Notice* fails ''to identify a single instance where it has actually requested a contract pertaining to BDS and the parties refused to provide it.'' To the contrary, the record demonstrates that the risks of inhibiting the flow of information about the business data services market to the Commission are real and have at times impacted the conduct of this proceeding. Indeed, as the Commission observed in the *Further Notice,* non-disclosure agreements likely precluded some parties from responding fully to the voluntary data requests issued by the Bureau in 2010 and 2011, contributing to delay in analyzing and resolving the questions at issue in this proceeding. Parties acknowledged that non-disclosure agreements had this effect. Moreover, it is not the instances where the Commission has sought information and been denied that are our chief concern, but rather the instances where the Commission has been unaware of potentially important information about the business data services market and stakeholders have been precluded by non-disclosure agreements from sharing that information in the first place.

190. AT&T also expresses concern that public release of information subject to a non-disclosure agreement will result in ''significant competitive harm.'' Disclosure to the Commission, however, is clearly distinguishable from disclosure to the public generally. We routinely adopt protective orders to protect parties' interests in maintaining the confidential nature of information submitted. As Level 3 explains, ''AT&T's claim that such a rule would undermine parties' confidentiality [interests] is without merit because the Commission's rules and procedures prohibit disclosure of information that has been made subject to confidentiality requirements.'' In this proceeding, the Commission has sought confidential data and information on multiple occasions and has consistently adopted protective orders limiting access to the information to certain individuals in order to ensure the confidentiality of these data and information.

191. We agree with commenters that recognize that the solution for concerns about inappropriate disclosure of sensitive information submitted to the Commission is to ensure such information is submitted subject to a protective order or to a request for confidential treatment pursuant to the Commission's rules. We conclude that because the information in question will not be made generally available to the public, our action here does not undermine parties' interest in insulating confidential or commercially sensitive information from the public. We therefore require that parties submitting to the Commission confidential information that is subject to a non-disclosure agreement seek confidential treatment of that information under the relevant protective orders, or otherwise pursuant to the Commission's rules.

192. We address two types of restrictions non-disclosure agreements impose and determine that both are precluded by the action we take here. First, we find that there is no justification for non-disclosure agreements that contain provisions that

prohibit outright the disclosure of confidential information to the Commission. Such agreements are expressly intended to obstruct parties' ability to disclose information to the Commission and the Commission's ability to access information necessary to oversee and evaluate the business data services market. They undermine our ability to render fact-based decisions informed by a complete record, and are generally contrary to the public interest.

193. We also find that non-disclosure agreements that require a direct request or legal compulsion prior to allowing disclosure also inhibit the Commission's conduct of its core regulatory and oversight functions and are therefore contrary to the public interest. By precluding the voluntary disclosure of information, such agreements render it impossible for the Commission to be aware of information in business data services sales agreements or even the existence of such sales agreements, and effectively preclude the Commission's ability to seek that information or those sales agreements.

194. Allowing voluntary disclosure to the Commission, subject to the Commission's protections for confidential information where necessary, will allow parties to disclose relevant information in a more timely fashion, which will in turn make the Commission's oversight and regulatory work more timely and efficient. The Commission's protective orders and confidentiality regulations will effectively insulate against the risk of inappropriate disclosure by ensuring confidential treatment of such information.

195. We agree with commenters that argue that restrictions on non-disclosure agreements for business data services are unnecessary in markets treated as competitive under the competitive market test. In these areas, market forces should be sufficient to protect purchasers of business data services from unreasonable practices. NASUCA et al. asserts, however, that prohibiting overly restrictive non-disclosure agreements is necessary to facilitate competitive conditions in the BDS marketplace generally. We agree that imposing a prohibition on such non-disclosure agreements will foster competitive conditions in areas that our data show are not yet competitive. We do not, however, see a need to impose this prohibition in competitive areas. In those areas, the Commission will still have access to relevant industry data through mandatory requests or data collections if needed. We therefore limit our restrictions on business data services-related non-disclosure agreements to those that apply to non-competitive areas as we define them in this Order. This reasoning applies to all non-disclosure agreements that govern business data services sales—whether they are contained in tariffs, contract tariffs, or commercial agreements. The presumption should be that competitive market dynamics would characterize the majority of sales in any arrangements that governed sales in both types of areas. Additionally, the bulk of sales of TDM based business data services in non-competitive areas would presumably be effected through TDM-only tariffs and contract tariffs. Parties are of course free to structure their sales arrangements in such a manner as to avoid including sales of services for both types of areas in a single agreement.

196. Accordingly, we adopt a general rule prohibiting the use of non-disclosure agreements in or related to tariffs or contract tariffs for the sale of business data services in areas treated as non-competitive by our competitive market test to the extent they forbid or impose any restriction on a party's ability to voluntarily disclose information to the Commission pursuant to appropriate safeguards for confidential information. No provider of business data services in areas treated as non-competitive may enter into or enforce a non-disclosure agreement that in any way forbids or prevents any party to that agreement from disclosing any information relevant to the Commission's business data services proceedings to the Commission. The rule we adopt today applies to all forms of agreements for the sale of TDM-based business data services, including price cap tariffs and contract tariffs in non-competitive areas. Parties submitting confidential information to the Commission that is subject to a non-disclosure agreement must either submit such information subject to the relevant protective orders governing this proceeding or, in the absence of a relevant protective order, seek confidential treatment for such information pursuant to sections 0.457 and 0.459 of the Commission's rules.

D. Adjustments to Price Cap Levels

197. Pursuant to the framework adopted in this Order, the primary services that will remain under price cap regulation will be the DS1 and DS3 end user channel terminations that incumbent LECs provide in non-competitive counties. To help ensure just and reasonable rates for these services, we adopt an X-factor of 2.0 percent that reflects our best estimate of the productivity growth that incumbent LECs will experience in the provision of these services relative to productivity growth in the overall economy. We retain Gross Domestic Product-Price Index (GDP–PI) as the measure of inflation that incumbent LECs will use in their price cap index calculations, continue to make a low-end adjustment available to price cap LECs in certain circumstances, and decline to adopt other changes that would affect price cap rates. In particular, we find that that no catch-up adjustment to the price cap indices is warranted.

1. Background

198. The core component of the Commission's price cap system is the price cap index, which is designed to limit the prices that a price cap LEC may charge for services. Each price cap LEC's price cap index historically has been adjusted annually based primarily on a productivity factor or ''X-factor'' and a measure of inflation (GDP–PI). The X-factor initially represented the amount by which LECs could be expected to outperform economy-wide productivity gains. The X-factor serves as an adjustment to the price cap indices to account for these productivity gains, and is subtracted from GDP–PI in the Commission's price cap formula.

199. The Commission last set X-factors for special access services in the 2000 *CALLS Order*. These X-factors, unlike prior X-factors, were not productivity-based but collectively acted as ''a transitional mechanism . . . to lower rates for a specified time period'' based on an industry agreement. The CALLS X-factor for special access services increased from 3.0 percent in 2000 to 6.5 percent for 2001 through 2003 but was set equal to inflation beginning in 2004. This frozen X-factor was intended to be an interim measure, lasting only until the expiration of the CALLS plan on June 30, 2005, yet the Commission has not acted to replace it with a productivity-based measure. As a result, price cap LECs' special access rates have remained frozen at 2003 levels, excluding any necessary exogenous cost adjustments.

2. Adopting a Productivity-Based X-Factor

200. The Commission's price cap system has been running on autopilot since June 30, 2005, with no analysis as to why rate levels from 2003 might have remained reasonable despite widespread changes in the business data services marketplace. We end this freeze by replacing the CALLS era frozen X-

factor with a productivity-based X-factor.

201. Our analysis includes several steps. We begin by deciding to use a total factor productivity (TFP) methodology in calculating business data services productivity gains or losses relative to growth in the general economy. We then decide to use the U.S. Bureau of Labor Statistics' Capital, Labor, Energy, Materials, and Services data for the broadcasting and telecommunications industries (KLEMS (Broadcasting and Telecommunications)) in applying our methodology. We use KLEMS (Broadcasting and Telecommunications) data to establish a zone of reasonable X-factor estimates. From that zone, we select an X-factor of 2.0 percent. Price cap LECs will apply this X-factor annually to help ensure that their price cap indices incorporate future productivity growth.

a. Selecting a Methodology for Calculating Productivity Gains or Losses

202. A price cap is intended to mimic competitive-market outcomes. One aspect of a competitive market is that output price growth over time matches the difference between industry input price growth and industry productivity growth. Another aspect of a competitive market is strong cost-reduction and investment incentives. A price cap that grows at a rate equal to the difference between the growth rate of input prices and industry productivity growth might, at least initially, hold prices to competitive levels, but if it were frequently updated on the basis of the regulated firms' behavior, quickly taking away any additional profits obtained either by implementing productivity increases or by negotiating lower input prices, the regulated firms would have little incentive to invest in cost and input price reduction. Consequently, in the *Further Notice,* the Commission proposed to use a proxy for the difference between the growth rate of input prices and industry productivity growth in setting allowed price growth under the cap. That proxy is a measure of the economy-wide rate of inflation, based on a national price index (*i.e.,* GDP–PI), that is adjusted, through an infrequently updated X-factor chosen to account for systematic differences between the growth rates of national prices and the difference between telecommunications industry input price growth and industry productivity growth. This proxy approach provides regulated firms with good incentives to reduce costs.

203. Under the approach outlined above, steps that a firm takes to lower its costs will not immediately affect the price cap. To see why, note that the price cap is adjusted based on two quantities: the national rate of inflation (GDP–PI) and the X-factor. The firm's cost-lowering actions will have, at most, a negligible effect on the national inflation rate. As for the X-factor, while the regulator periodically will assess the extent to which the regulated firms have lowered their costs (and thus might adjust the X-factor and price cap accordingly), this process typically occurs with substantial delays. Between X-factor adjustments, firms can keep any additional profits that they achieve through cost reductions; hence, the price-cap regime provides material incentives for firms to reduce their costs.

204. In summary, our proposed approach is to estimate an X-factor to be subtracted from the annual change in the GDP–PI to determine the annual change, c, in the price cap index: $c = P - (D + t)$ (Equation 1), where P is the economy-wide rate of inflation (*i.e.,* the GDP–PI), D is the projected difference between the economy-wide rate of inflation and the growth rate of industry input prices, and t is the projected growth rate of the industry's productivity level. The X-factor, which is the sum of D and t, may be interpreted as a correction term by which the projected growth rates of economy-wide prices are adjusted to account for systematic differences between the broader economy and the regulated industry. Several commenters agree that this approach is sound, no commenters oppose it, and we adopt it.

205. In the past, the Commission has relied on staff studies of the historical total factor productivity (or TFP) growth rate of incumbent LECs to estimate future productivity growth. TFP is the relationship between the output of goods and services to inputs, and is commonly used to measure productivity in the economy as a whole. TFP studies typically measure productivity using the ratio of an index of the outputs of a firm, industry, or group of industries to an index of corresponding inputs. Productivity growth is measured by changes in this ratio over time. In a TFP model, output is typically measured in terms of physical units (*e.g.,* minutes or calls) of the good or service produced. In a case in which more than one good or service is supplied (*i.e.,* there are multiple outputs), a standard practice is to create an index (*e.g.,* an average that weights by output revenue shares) that aggregates the output levels. The resulting output index shows changes in the level of output over time; in other words, it provides the growth rate of the measured output. Similarly, the growth rate of the aggregate input index depends on the combined growth rates of the individual input indices—such as indices for capital, labor, energy, materials and services—weighted, for example, by input expenditure shares.

206. In the *Further Notice,* the Commission proposed to calculate the X-factor by subtracting from the historical rate of change in GDP–PI the historical rate of change in industry input prices and adding to it the historical rate of change in industry TFP. The calculation can be expressed by the following formula: $X = \% \Delta GDP–PI - \% \Delta$ Industry Input Prices $+ \% \Delta$ Industry TFP (Equation 2). No commenter challenges this basic TFP methodology. The X-factor analyses presented by the parties generally follow this approach. Consistent with past practice, we conclude that we should apply this TFP methodology in our X-factor calculations.

b. Selecting an Appropriate Data Source

207. Having settled on a methodology for calculating the X-factor, we need to identify an appropriate data source. Upon review of the record, we find that KLEMS (Broadcasting and Telecommunications) is the only reliable and internally consistent dataset in the record for measuring incumbent LEC productivity and input prices. We select that dataset for our X-factor calculations.

(i) Available Data Sources

208. The KLEMS (Broadcasting and Telecommunications) database was one of three datasets on which the Commission invited comment. The other two consist of: (a) Data from the peer review process in connection with the development of the Connect America Cost Model (CACM); and (b) those data in combination with cost data that TDS Metrocom (TDS) submitted in this proceeding (CACM–TDS). All three datasets are described more fully in Appendix B to the Report and Order. The Commission asked whether these datasets would provide a reasonable basis for estimating business data services productivity growth relative to growth in the general economy.

209. The Commission also asked the parties to suggest adjustments to these datasets that might improve their utility as a measure of business data services productivity growth and requested that the parties suggest additional datasets that might better balance precision with administrative feasibility. Only one party, Sprint, suggests an additional dataset—a version of KLEMS (Broadcasting and Telecommunications)

that purportedly is restricted to data from the telecommunications industry (KLEMS (Telecommunications)). Sprint also suggests refinements to the CACM dataset that, in Sprint's view, improve it. We discuss these datasets in turn.

210. *KLEMS (Broadcasting and Telecommunications).* This dataset provides yearly industry-level measures of input prices and total factor productivity. This dataset has many merits because, as commenters point out, it relies on ''publicly available, annual industry-level data on industry-level measures of input prices and total factor productivity'' and was ''developed using rigorous total factor productivity principles and is a valid source of measuring total factor productivity and input price trends for various industries.'' It also is ''reliable and internally consistent,'' and based on ''well-accepted economic theory and publicly available data.'' But instead of being restricted to business data services or wireline telecommunications, this dataset provides data for the broadcasting and telecommunications sectors, which collectively have annual revenues approximately twelve times those for business data services. These sectors include broadcasting, cable television, and satellite television distribution services, wireless telecommunications, mass market Internet access services, and the Voice-over-Internet Protocol (VoIP) industries, each of which has a cost structure and produces outputs different from the business data services industry.

211. The parties dispute the effect of this broad scope on BDS productivity growth estimates that are derived from the KLEMS (Broadcasting and Telecommunications) dataset. Ad Hoc and Sprint contend that this broad scope creates a downward bias in those estimates. AT&T and CenturyLink maintain, however, that any bias would overstate BDS productivity growth relative to productivity growth in the overall economy. AT&T argues that ''wireless services, broadband Ethernet services, and cable and wireline Internet access services'' supply are more productive than legacy DSn and that the KLEMS (Broadcasting and Telecommunications) dataset therefore may overstate productivity growth for the TDM-based services to which the X-factor will apply. CenturyLink asserts that growth in labor productivity has been significantly higher in broadcasting and wireless telecommunications than in wireline telecommunications, and that it is therefore unlikely that broadcasting and wireless telecommunications have experienced lower overall productivity growth than wireline telecommunications. Although the record falls short of providing the information we would need to resolve whether the KLEMS (Broadcasting and Telecommunications) dataset overstates or understates BDS productivity growth, we find that this dataset provides the best available information under the circumstances.

212. *CACM and CACM–TDS.* The CACM and CACM–TDS datasets, even with the refinements suggested by Sprint, are less than ideal. As explained more fully in Appendix B to the Report and Order, the CACM dataset combines CostQuest cost share data from the CACM peer review process with labor cost data from the Bureau of Labor Statistics (BLS), and real estate price data from Moody's Investor Service and Real Capital Analytics. While this dataset provides a more direct focus on business data services than KLEMS (Broadcasting and Telecommunications) provides, we find it neither reliable nor internally consistent. Sprint's refinements to this database do not cure these fundamental problems. Both of these datasets rely in part on data from the CACM peer review process that was developed to determine the forward-looking economic costs of providing broadband Internet access services. Those data provide at best a clumsy tool for determining historical total factor productivity growth for business data services. In addition, as refined by Sprint, the CACM dataset includes company-specific data that we and the parties to this proceeding are unable to fully evaluate and, therefore, may be unreliable. We therefore reject the CACM dataset as well as that dataset as refined by Sprint as potential data sources for our X-factor calculations.

213. The CACM–TDS dataset adds historical cost data from TDS's incumbent LEC operations to the CACM dataset. While the addition of the TDS data further tightens the focus on business data services, those data do ''not address or eliminate any of the fundamental shortcomings with the CACM data'' because they are ''proprietary, unvalidated data from a single competitor that is seeking regulation.'' We therefore reject the CACM–TDS dataset as a potential data source for our X-factor calculations.

214. *KLEMS (Telecommunications).* To address, in part, the alleged overbreadth of the KLEMS (Broadcasting and Telecommunications) dataset, Sprint proposes a dataset that purportedly excludes broadcasting industry data and therefore, as asserted by Sprint, is preferable to KLEMS (Broadcasting and Telecommunications) as a tool for measuring business data services productivity growth. The KLEMS (Telecommunications) dataset, however, suffers from many of the scope problems of the KLEMS (Broadcasting and Telecommunications) dataset with several additional problems. As an initial matter, excluding broadcasting data from the KLEMS (Broadcasting and Telecommunications) dataset would reduce, but not eliminate, any overbreadth problem. And we are unable to verify Sprint's assertion that the KLEMS (Telecommunications) dataset excludes broadcasting industry data. Indeed, AT&T and CenturyLink et al. make credible arguments that the KLEMS (Telecommunications) dataset ''comingle[s] broadcasting and telecommunications data.'' This uncertainty over which industries are reflected in the KLEMS (Telecommunications) dataset precludes any finding that it provides a more narrow focus on business data services productivity growth than that provided by the KLEMS (Broadcasting and Telecommunications) dataset. We are unable to determine what methodology the European Union used to translate KLEMS (Broadcasting and Telecommunications) data into KLEMS (Telecommunications) data and whether that data source is indeed restricted to telecommunications data.

215. Even if it does exclude broadcasting, the KLEMS (Telecommunications) dataset is problematic for at least two additional reasons. First, that dataset only provides a price index for energy, non-energy materials, and purchased services inputs, and omits critical input prices for capital and labor, which means that it provides only an incomplete picture of the industries within its scope. Second, the KLEMS (Telecommunications) dataset also provides a value-added, rather than a gross output, measure of productivity growth, which precludes an apples to apples comparison of that growth to input prices, which are based on gross input. Each of these problems—lack of transparency, omission of critical inputs, and employing a value-added methodology—provides an independent basis for not using KLEMS (Telecommunications) in our X-factor calculations. We therefore reject this dataset as a potential data source for those calculations.

(ii) Selection of Data Source

216. None of the datasets before us allow us to estimate with precision business data services productivity growth relative to growth in the general economy, and indeed of those datasets

only KLEMS (Broadcasting and Telecommunications) is reliable and internally consistent. In these circumstances, we conclude that the better course is for us to use that dataset to determine business data services productivity and input price growth, relative to economy-wide productivity and input price growth, rather than postponing that determination pending a search for a better option. As the D.C. Circuit has recognized, the Commission endeavors to find the best solutions but, at times, must settle for solutions that are ''reasonable under difficult circumstances.'' The D.C. Circuit has noted:

> [W]hen an agency makes rational choices from among alternatives all of which are to some extent infirm because of a lack of concrete data, and has gone to great lengths to assemble the available facts, reveal its own doubts, refine its approach, and reach a temporary conclusion, it has not acted arbitrarily or capriciously.

Here, where our X-factor decision provides only our '' 'tentative opinion' about the dividing line between reasonable and unreasonable rates for the limited purpose of exercising [our] suspension power'' under section 204 of the Act, we believe that we may properly rely on the KLEMS (Broadcasting and Telecommunications) dataset in our X-factor calculations. We now turn to those calculations.

c. X-Factor Calculations

217. We determine the productivity-based X-factor as follows. First, we use KLEMS (Broadcasting and Telecommunications) data to develop a range of X-factors for four periods: 1987 to 2014; 1997 to 2014; 2005 to 2014; and 2009 to 2014. Second, from this range of X-factors we develop a zone of reasonableness from which it would be appropriate to select an X-factor. Third, we decide not to adjust that zone to compensate for KLEMS (Broadcasting and Telecommunications)'s overbreadth. Finally, we select the X-factor from within this zone.

218. *Data Periods.* We use four different data periods to calculate four different
X-factors to gauge the sensitivity of KLEMS (Broadcasting and Telecommunications)-based calculations to different data periods and because there is no single, correct data period that we might use for this purpose. The four data periods are: 1987 to 2014; 1997 to 2014; 2005 to 2014; and 2009 to 2014. We note that Sprint supports using 1997 to 2014, and AT&T supports using 2005 to 2014.

219. *1987 to 2014.* This is the longest period for which KLEMS (Broadcasting and Telecommunications) data are available. As the longest timeframe, this data period has the most observations and therefore collectively these observations contain the most information. In particular, this period includes two complete business cycles. This is an advantage because productivity increases when the economy expands and decreases when the economy contracts. Measuring productivity over at least one complete business cycle increases the likelihood that the results represent the future state of the economy. Two complete cycles might be preferred to one because no two business cycles are alike. One business cycle may not represent the future any better than the other.

220. This period also includes a significant amount of time before and after the two business cycles. Using a timeframe that includes the maximum period for which data are available minimizes the likelihood of an arbitrary choice among many possible shorter periods within the longer period, given that there is no obviously correct choice. The disadvantage of this time period is that the data from the earliest years in the period may be stale or otherwise reflect economic conditions that are unlikely to persist into the future. The value of the most recent and most relevant data within this time period might not be apparent if combined with older data that are stale and irrelevant.

221. *1997 to 2014.* This period includes one complete business cycle. As discussed above, at least one complete business cycle should be included in the data on which a productivity study is based because productivity is procyclical. Sprint supports using 1997 to 2014 data instead of 2005 to 2014 data because the latter period largely reflects the longest and deepest recession the U.S. has experienced since 1945. Sprint concludes that a longer time period is therefore likely to provide a better estimate of future productivity growth. An additional reason to use this period, or one longer, is that the current economic expansion is 93-months-old, which is significantly longer than the 58-month average length of prior expansions going back to 1945. A shorter period may give too much weight to a relatively long-period of expansion. Another reason why this current economic expansion is unique is that the average annual growth rate of this expansion is the lowest among expansions since 1945, approximately 2.1 percent per year.

222. *2005 to 2014.* AT&T argues that this period balances the tradeoff between short and long data periods. AT&T claims that data for a shorter period better captures recent productivity trends, but that such a period might reflect large variation in productivity that would lead to unstable X-factor projections. In contrast, AT&T asserts that a longer period might produce a more stable series, but such a period might include stale data that are irrelevant to forward-looking productivity projections. One disadvantage of this timeframe is that it does not encompass at least one complete business cycle. This problem perhaps is partially mitigated because the period includes the December 2007 peak and June 2009 trough of the current business cycle and a large fraction of the current expansion.

223. *2009 to 2014.* This period minimizes the number of observations that contain stale information and depicts recent trends. The main disadvantage of this period is that it does not contain at least one complete business cycle. In fact, this period only includes years of expansion. So, this period might not provide data representative of future productivity growth.

224. Table 2 provides, for each of these four periods, X-factors calculated using Equation 2 and KLEMS (Broadcasting and Telecommunications) data. [''Table 2. KLEMS (Broadcasting and Telecommunications) X-factors'' omitted].

d. Zone of Reasonableness

225. The four data periods reflected in Table 2 establish a zone of productivity-based X-factor estimates of between 1.7 and 2.3 percent. This zone is relatively narrow, as the data period does not have a very large impact on the value of the X-factor. For example, the difference between the lowest and the highest percentages is 0.6 percentage points. The arithmetic average and the mid-point of the four X-factors are both 2.0 percent. The average implicitly weights the most-recent observations the most and the earliest observations the least because the most recent observations are in the most periods and the earliest observations are in the fewest periods.

226. We find that it would be unreasonable to adjust this zone either upward or downward to account for the broad scope of the KLEMS (Broadcasting and Telecommunications) dataset from which this zone was derived. Any such adjustment would necessarily reflect our determination that this overbreadth creates either a downward bias in our productivity growth estimates (which could lead to our adjusting the range upward) or an upward bias (which could lead to our

adjusting the range downward). The parties provide sharply divergent views on the direction of any possible adjustment. On the one hand, several parties argue that price cap LECs are realizing decreasing business data services per unit costs from the growth in packet-switched services, such as Ethernet, as customers transition from TDM to packet-switched services. Other parties maintain that price cap LECs have achieved little productivity growth relative to that in the overall economy and that the DS1 and DS3 services that will be subject to price caps have not shared in any decrease in per unit costs.

227. Cost-reducing growth is clearly occurring in price cap LECs' overall business data services operations. A significant portion of the assets, particularly outside plant, used to provide DS1s and DS3s, are also used to provide higher bandwidth circuit-based services or packet-based services, and *vice versa.* The more such sharing occurs (*i.e.,* the more demand density increases), the lower both the incremental and average cost of any service, and total factor productivity increases. These cost reducing effects occur and apply to remaining DS1 and DS3 services, even when higher bandwidth circuit-based services or packet-switched services are substituted for them, so long as the two sets of services share costs.

228. Growth in providing higher bandwidth circuit-based services and packet-based services is outpacing declining DS1 and DS3 services, a trend that strongly suggests that overall unit costs will continue decreasing into the foreseeable future. Price cap LECs are investing aggressively in modern packet-based telecommunications networks and services. AT&T, for example, announced that by the year 2020, 75 percent of its network will be controlled by software. AT&T disclosed in an annual report that it was ''focused on building a modern network architecture that will provide the highest efficiency and productivity in the industry'' and ''[t]o make that happen'' the ''biggest [front] by far is transforming [AT&T's] network from hardware to software-centric'' which allows AT&T to ''deliver the most network traffic at the lowest marginal cost in the industry.'' Verizon announced a software-defined networking-based strategy ''to introduce new operational efficiencies and allow for the enablement of rapid and flexible service delivery to Verizon's customers.''

229. The record does not make clear, however, to what extent, if any, these decreasing unit costs and overall productivity gains will apply to the services that will remain under price caps, which for practical purposes consist of DS1 and DS3 channel terminations. Indeed, it is possible that, for DS1 and DS3 services in general, declining utilization of incumbent LEC plant and rising service-specific costs will more than offset any overall gains in business data services productivity. As AT&T points out, ''demand for DSn services has been in rapid decline in recent years, as price cap LECs retire their legacy TDM networks.'' As a result, price cap LECs are likely experiencing ''very low utilization on [their] legacy TDM switches'' and the ''accompanying loss of scale economies suggests that it is unlikely that price cap LECs have achieved productivity gains that are in excess of inflation'' for DS1 and DS3 services. This declining utilization of DSn-specific plant means that providers must amortize shared costs among fewer customers (*i.e.,* unit costs are likely rising). It therefore appears that, for DS1 and DS3 services generally, price cap LECs' operating expenses may have fallen at a much slower rate than the demand for their services, causing their average cost of providing DSn services to steadily climb.

230. Nor does the record make clear whether any overall trend in DS1 and DS3 productivity growth extends to the areas that will remain under price caps. These non-competitive areas have significantly less demand density than the competitive areas that will no longer be subject to the price cap regime. The price cap LECs therefore may be less likely to achieve the same gains in economies of scale in non-competitive areas than in competitive areas. Whether these gains would be higher or lower than elsewhere cannot be determined from the record. The price cap LECs' initial price cap indices (and consequently all changes to those indices) reflected the costs of serving all areas within those LECs' service territories. CenturyLink argues adjustments to those indices should account for the higher costs of serving the areas that will remain under prices caps ''[w]hether due to unique geographic difficulties, insufficient population density to generate economies of scale, or an array of other possible rationales.'' However, the X-factor is determined by the rate of change of costs, not by whether the absolute level of costs is higher or lower in a given location.

231. While the record does not enable us to resolve the disputes over price cap LECs' productivity growth and ability to recover the costs of serving non-competitive areas with absolute certainty, we find that our KLEMS (Broadcasting and Telecommunications)-based calculations likely overstates, rather than understates, business data services productivity growth in those areas. The price cap LECs have not submitted the company-specific input price and output data that we would need to quantify this overstatement (and adjust the zone of reasonableness downward). We therefore make no such adjustment.

232. We reject Sprint's argument that we should adjust the zone of reasonableness upward to bring it into line with prior X-factor prescriptions, which were based on relatively narrow sets of data related almost exclusively to price cap LEC operations rather than broad datasets such as KLEMS (Broadcasting and Telecommunications). Sprint points out that in the *1999 Price Cap Performance Review* proceeding, Commission staff computed X-factors for each of the years 1986 through 1998 using price cap LEC-specific data that were significantly higher than the X-factors that would have been computed using KLEMS (Broadcasting and Telecommunications) data. We find that this comparison fails to account for differences between the task before the Commission in the *1999 Price Cap Performance Review* proceeding, which was to determine an X-factor for all special and switched access services to be provided by price cap LECs, and our task here of determining an X-factor only for those business data services that price cap LECs will provide in non-competitive areas.

e. Selection of X-Factor

233. We conclude that we should select an X-factor below the top of the zone of reasonableness, 2.3 percent, in order to recognize the diminishing share DS1 and DS3 services have had, and will continue to have, of the overall business data services market. Indeed, over the longer term, these services will be replaced by Ethernet services or other more advanced business data services made possible by the transition to IP-based services transmitted over fiber. As demand for DS1 and DS3 services continues to fall, the costs directly attributable to (in contrast to the costs for assets shared between those services and packet-based services) maintaining this legacy technology, will begin to rise. For example, over time the volume of TDM equipment sales will fall to levels that deny manufacturers economies of scale. Similarly, there will likely be additional costs associated with warehousing, work programs, and

maintaining expertise in TDM technology, while moving aggressively toward the widespread deployment of Ethernet and other advanced technologies.

234. Requiring DS1 and DS3 rates to be reduced by percentages that ignore the transition from a legacy, TDM technology to an advanced technology could require the incumbent LECs to supply DS1s and DS3s at rates that do not recover their costs, and that inefficiently incentivize businesses to rely on DS1 and DS3 services, rather than more advanced business data services. Presumably, there are customers that will wish to continue to rely on a legacy technology at least for a period of time even though a new technology is readily available because it is less expensive on a net present basis for them to do so. In a competitive market, customers that continued to rely on a legacy technology as a new technology begins to dominate the market would be charged higher prices if costs directly attributable to the old technology were rising. Our X-factor decision should incorporate this aspect of competitive markets.

235. The lower-bound of the zone of reasonableness is 1.7 percent, a percentage based on data from 2009 to 2014. While this percentage provides insight into the most-recent trends in productivity and input prices, it reflects only a period of unusual macroeconomic expansion, as explained above. We find this period too short and too unrepresentative by itself to provide reliable insight into future business data services productivity growth. No party has submitted an X-factor study or similar data-based analysis purporting to show that the X-factor should be lower than 2.0 percent. AT&T's proposed X-factor, like our X-factors, reflect KLEMS (Broadcasting and Telecommunications) data. AT&T used data for 2005 to 2014 in calculating its X-factor, a period for which the X-factor is 2.0 percent. In these circumstances, we find that the X-factor we select should be above the lower bound of reasonableness.

236. As mentioned, the KLEMS (Broadcasting and Telecommunications) data on which this zone of reasonableness is based is overly broad; and, although we think an upward bias more likely, we are unable to resolve the dispute among the parties as to whether this broad scope creates a downward or upward bias. Our inability on the record before us to quantify either the magnitude or the direction of this bias supports selection of the average or the mid-point of the four X-factors, both of which are 2.0 percent. Taking all of these factors into account, we prescribe an X-factor of 2.0 percent. This X-factor reasonably assigns weight to the four different X-factors and accounts to the extent possible for the uncertain effects of bias in the overly-broad data.

3. Methodology for Setting Inflation Measure

237. We retain the U.S. Department of Commerce's Bureau of Economic Analysis's (BEA's) chain-weighted GDP–PI as the measure of inflation that price cap LECs will use in their price cap index calculations. As a chain-weighted index, GDP–PI captures economy-wide inflation over the medium-term and long-term comprehensively and ''significantly more accurate[ly]'' than fixed-weighted indexes, which become unrepresentative after a few years of change. We find no alternative measure of inflation that is as accurate as GDP–PI in the medium and long-term and that is not susceptible to carrier influence or manipulation. Accordingly, we retain GDP–PI as the inflation measure in our price cap formula.

4. No Catch-Up Adjustment Is Warranted

238. The price cap indices have been effectively frozen since the CALLS plan expired on June 30, 2005. We conclude that no catch-up adjustment to those indices is warranted.

239. *Assessment Periods.* We use three time periods in assessing whether a catch-up adjustment is warranted: July 1, 1997 to November 30, 2017; July 1, 2000 to November 30, 2017; and July 1, 2005 to November 30, 2017. The starting points for these periods are the day the Commission's 1997 X-factor prescription took effect, the date the CALLS plan took effect, and the day after the CALLS plan expired. Their ending point is the day before the going-forward X-factor adopted in this Order will take effect. For simplicity, we refer to these periods as 1997 to 2017, 2000 to 2017, and 2005 to 2017.

240. The Commission prescribed X-factors in 1991, 1995, 1997, and 2000. The 1991 and 1995 prescribed X-factors were productivity-based and judicially upheld. The 1997 X-factor of 6.5 percent, while productivity-based, was reversed and remanded by the D.C. Circuit. Including 1997 to 2000 in the assessment period reflects that judicial action as well as the fact that the Commission never addressed the remanded X-factor on its merits. Instead, in the *CALLS Order,* the Commission replaced the remanded X-factor with a ''transitional mechanism'' under which the X-factor increased from 3.0 percent in 2000 to 6.5 percent for 2001 through 2003 and was set equal to inflation beginning in 2004. These X-factors, however, were based on an industry agreement, not changes in productivity and input prices. Including 2000 to 2005 in the assessment period reflects that administrative history. Finally, including 2005 to 2017 in the assessment period reflects the Commission's failure to incorporate a productivity-based X-factor into its price cap system once the CALLS plan expired.

241. *Methodology.* First, for each of the three assessment periods, we use the most currently-available KLEMS (Broadcasting and Telecommunications) data through 2014 to calculate compound annual growth rates in broadcasting and telecommunications productivity and input prices. We then calculate the difference between these two rates. Second, we compound the value of each annual difference over the number years in each assessment period. The results are the percentages by which the price cap index would be adjusted to accurately reflect changes in productivity and input prices. Third, we subtract the historical change in the price cap index from each compounded value to calculate the catch-up adjustment for each assessment period. Finally, we evaluate whether we should adjust the price cap indices using these catch-up factors.

242. We use KLEMS (Broadcasting and Telecommunications) data for three data periods—1997 to 2014, 2000 to 2014 and 2005 to 2014—to estimate historical changes in levels of productivity and input prices for purposes of the catch-up calculations. The year 2014 is the most recent year for which KLEMS (Broadcasting and Telecommunications) data are available, and data are published only for calendar years. As we explain below, we adopt December 1, 2017 as the effective date for the going-forward X-factor. As we have no data for 2015 to November 30, 2017, we extrapolate annual growth rates based on the data periods that end in 2014 for an additional 35 months beyond the end of the data (*i.e.,* for 2015, 2016, and 11 months of 2017), because mathematically it is simple, the period of extrapolation is relatively short, and there is no obviously superior method. We also assume that productivity and input price growth rates over the last six months of 1997, 2000, and 2005 were the same as over each entire year, again for simplicity and the lack of any obviously superior way to exclude the first six months of 1997, 2000, and 2005 or to reconcile the

use of calendar-year data with an estimation period that reflects tariff years that begin on July 1.

243. Table 3, below, sets forth the KLEMS (Broadcasting and Telecommunications) compound annual rates of growth in productivity and input prices for 1997 to 2017, 2000 to 2017 and 2005 to 2017, and the annual difference between the two rates of growth, *C.* Table 3 also shows the value of these differences compounded over the assessment periods, *E,* and the historical change in the price cap index over the assessment periods, *F.* The historical change in the price cap index reflects the X-factors that were in effect during the assessment periods and the rate of inflation during these periods as measured by changes in GDP–PI (but ignores exogenous cost changes). The catch-up adjustment for each assessment period, *G,* is equal to the compounded change in price cap index, *E,* minus the historical change in the price cap index, *F.* This calculation accounts for differences between what a KLEMS (Broadcasting and Telecommunications)-based X-factor would have been and the actual X-factors that applied. [''Table 3. Potential Catch-up Adjustments for Multiple Periods Through November 30, 2017'' omitted].

244. *Discussion.* We decline to require price cap LECs to implement a catch-up adjustment to baseline price cap levels. First, focusing on the period since expiration of the CALLS plan, 2005 to 2017, the annual difference between the KLEMS (Broadcasting and Telecommunications) industry price index and productivity is only −0.11 percent annually, which when compounded over a 12-year, five-month period results in only a 1.40 percent potential reduction in the price cap index. This suggests that historical business data services productivity gains for the assessment period 2005 to 2017 were almost exactly offset by inflation, which is what the X-factor has been set equal to since the expiration of the CALLS plan on June 30, 2005. Indeed, the annual and 12-year, five-month differences of −0.11 percent and −1.40 percent, respectively, are so small as to be well within the margin of error for our calculations. Any catch-up adjustment would apply only to lower bandwidth business data services, such as DS1s and DS3s, and only to the extent price cap LECs provide them within non-competitive areas. We find it likely that productivity growth for these services in these areas lagged productivity growth for price cap LECs' business data services generally between 2005 and 2017.

245. Second, the results for the assessment periods that begin in 1997 and 2000 suggest that the 6.5 percent X-factor that the Commission prescribed in 1997 as well as the X-factors that were in effect during the CALLS plan were unreasonably high and therefore that the price cap indices were unreasonably low. This could help explain the extent to which certain price cap incumbent LECs have priced at the top of the price caps. The 1997 to 2017 assessment period results show a difference between industry price index and productivity of −0.35 percent annually, which when compounded over a 20-year, five-month period would have reduced the price cap index by 6.84 percent. Adjusting this figure by the −26.31 percent historical change in the price cap index produces a catch-up adjustment that would increase price cap levels by 19.47 percent. The 2000 to 2017 assessment period results show a difference between industry price index and productivity of −0.34 percent annually, which when compounded over a 17-year, five-month period would have reduced the price cap index by 5.81 percent. Adjusting this figure by the −13.94 percent historical change in the price cap index produces a catch-up adjustment that would increase the price cap index by 8.13 percent.

246. We decline to require price cap LECs to implement a catch-up adjustment to the price cap index. An adjustment based on the period since the CALLS plan expired would result in only a modest decrease in price cap levels and would likely overstate productivity growth for the business data services that will remain under price caps. Such an adjustment also would ignore the facts that the X-factors used during the CALLS plan itself were not productivity-based and that the X-factor adopted before CALLS was struck down by the D.C. Circuit. Adjustments based on periods when those X-factors were in effect would increase price cap levels, a result that no party has urged. In these circumstances, we believe it more prudent to rely on existing price caps levels, which at least have the benefit of minimizing potential rate shock to consumers.

247. Finally, we recognize that carriers have entered price-cap regulation at different points over the last 20 years, and so any catch-up adjustments would need to reflect that fact. It would make no sense, for example, to impose a catch-up adjustment calculated to reflect productivity over the last 12 or 20 years to a carrier that converted to price cap regulation just five years ago. And weighing the uncertain benefit of such adjustments to consumers against the cost to carriers (and ultimately consumers) of applying these differing adjustments as well as the cost to the Commission to monitor compliance, we conclude that not imposing a catch-up adjustment serves the public interest.

5. Additional Price Cap Adjustment Mechanisms

248. We consider several potential features of the price cap regime whose implementation could affect price cap rates. We retain the low-end adjustment mechanism for price cap LECs that meet certain conditions. We, however, decline to incorporate into our price cap regime three mechanisms that would affect the X-factor—a consumer productivity dividend, a growth or ''g'' factor, and earnings sharing between ratepayers and carriers, or to subdivide the special access price cap basket into different categories or subcategories.

249. *Low-End Adjustment.* We retain a low-end adjustment mechanism because we find it provides an appropriate backstop to ensure that carriers are not subject to protracted periods of low earnings that impair their ability to attract capital and provide service. This adjustment will only be available to price cap LECs to the extent they provide business data services in non-competitive areas. Carriers that obtained pricing flexibility under the Commission's prior rules, exercise downward pricing flexibility pursuant to this Order (for example, by entering into a contract tariff with a customer), or elect the option to use Generally Accepted Accounting Principles (GAAP) rather than the Part 32 Uniform System of Accounts as set forth in our recent *Part 32 Accounting Order* will be ineligible for a low-end adjustment. We find that, consistent with past practice, setting the low-end adjustment mark at 8.75 percent, 100 basis points below the authorized rate of return for rate of return carriers, will continue to ensure that price cap LECs have the opportunity to attract sufficient capital.

250. Historically, the low-end adjustment permitted price cap LECs that earn a rate of return 100 basis points or more below the prescribed rate of return for rate-of-return carriers to temporarily increase their price cap indices in the next year to a level that would allow them to earn 100 basis points below the prescribed rate of return. Unusually low earnings may be attributable to an error in the productivity factor, the application of an industry-wide factor to a particular LEC, or unforeseen circumstances in a particular area of the country. Failure to include any adjustment for such

circumstances could harm customers as well as stockholders of such a LEC, as a below-normal rate of return over a prolonged period could threaten the LEC's ability to raise the capital necessary to provide modern, efficient services to customers. We therefore retain the low-end adjustment mechanism.

251. The low-end adjustment mechanism permits a one-time PCI adjustment to a single year's rates to avoid back-to-back earnings below a benchmark. If a price cap LECs' earnings fall below the low-end adjustment mark in a base year period, it is entitled to adjust its rates upward to target earnings to an amount not to exceed the low-end mark, using the period as a baseline. In the past, the Commission used 100 basis points below the authorized rate of return for rate-of-return carriers as the low-end adjustment mark. The authorized rate of return for rate-of-return carriers is presently 9.75 percent, and 8.75 percent is 100 basis points below that percentage. The latter percentage is above the embedded cost of debt the Commission determined for each price cap LEC in March 2016. An 8.75 percent rate of return should provide each eligible price cap LEC with the opportunity to meet its existing obligations to debtholders and attract sufficient capital while continuing to provide services.

252. We reject Sprint's argument that we should not base our low-end mark on the authorized rate of return for rate-of-return carriers because that rate does not reflect the large price cap LECs' cost of capital. The rate reflects a weighted average cost of capital that was calculated using data from a proxy group that included large price cap LECs (*e.g.,* AT&T, Verizon, and CenturyLink), mid-sized price cap LECs (*e.g.,* FairPoint, Frontier, Hawaiian Telcom, and Windstream), as well as publically traded rate-of-return LECs. Accordingly we set the low-end adjustment mark at 8.75 percent.

253. *Consumer Productivity Dividend.* We decline to incorporate a consumer productivity dividend (CPD) adjustment into the X-factor adopted in this Order. In instituting price caps in 1990, the Commission expected that incentive regulation would result in greater productivity gains than LECs had historically achieved under rate of return regulation. The CPD was designed to ensure that ratepayers would benefit from these additional gains. The 2.0 percent X-factor adopted in this Order reflects all anticipated future business data services productivity growth. There should be no additional gains beyond those captured in this X-factor. We therefore do not include a CPD in the X-factor.

254. *Growth Factor.* We decline to adopt a growth or ''g'' factor adjustment to the price cap indices because we find that our 2.0 percent X-factor already accounts for average cost decreases due to demand growth, which the ''g'' factor was designed to capture. We find that a ''g'' factor is unnecessary because the 2.0 percent X-factor should capture all of the productivity changes for business data services, including demand growth. If business data services demand growth leads to the realization of scale economies, input prices fall, and productivity increases, which our X-factor calculations should capture. Therefore, we do not include a growth factor similar to the ''g'' factor in the price cap index formula for special access services.

255. *Earnings Sharing.* We decline to reinstate earnings sharing arrangements between ratepayers and carriers. In the *Further Notice,* the Commission asked whether it should reinstate earnings sharing, which had been a feature of the Commission's original price cap system. In 1997, the Commission eliminated earnings sharing, finding that it blunted price cap LECs' efficiency incentives and that eliminating it would remove vestiges of rate of return regulation from the price cap system. The only party directly addressing this area opposes reinstating earnings sharing. We find that the Commission's prior reasoning supporting eliminating earnings sharing persuasive, and there is no record support to overturn the Commission's past finding and reinstate earnings sharing.

256. *Baskets and Bands.* We decline to subdivide the special access basket into different categories and subcategories. The only party addressing this area, Inteliquent, asks that we create a service basket subcategory for multiplexing services to ensure that any required TDM rate reductions flow through to these services, which it asserts have unreasonably high rates. Simply creating a multiplexing subcategory within the special access basket, however, would not by itself result in lower multiplexing rates. Even if we were to accept Inteliquent's premise that multiplexing rates are unreasonably high, the record in this proceeding would not enable us to determine a reasonable level.

6. Implementation

257. Having adopted a new X-factor for use in the price cap index for price cap LECs in non-competitive areas, we now set forth the path for implementing that new approach. We require revised tariff review plans (TRPs) implementing the X-factor to be filed with the Commission to become effective on December 1, 2017.

258. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year, which become effective on July 1. The annual filings include submission of TRPs that are used to support revisions to the rates, including revisions that pertain to the X-factor. To ease the burden on the industry, and because base period demand and the value of GDP–PI reflected in the price cap indices typically are not updated during a tariff year, we permit incumbent LECs to use the same base period demand and value of GDP–PI in their December 1, 2017 filings as in their July 1, 2017 annual filings.

259. Consistent with that approach, each price cap incumbent LECs must file, for business data services, revised TRPs and rates to reflect the newly revised X-factor. The X-factor adopted in this Order only applies prospectively, and each price cap incumbent LEC must recalculate its price cap index based on the December 1, 2017, effective date of this X-factor. In particular, the new X-factor should be reflected in the calculation of the price cap index for the special access basket and the pricing bands for each service category and subcategory within this basket. Rates must be established at levels where the actual price index does not exceed the price cap index and the service band index for each service category and subcategory does not exceed its upper limit. For purposes of this filing, the price cap incumbent LECs must base the calculation of these indices on our rules for an annual filing, other than for the periods used to measure base period demand and the value of GDP–PI. Further specific direction on the material required to be filed in the TRPs will be provided in a public notice or order preceding the December 1, 2017 effective date of the 2.0 percent X-factor, which will address compliance with price cap tariff filing procedures (including required certifications).

E. Wholesale Pricing

260. We decline to adopt ex ante rules governing the relationship between wholesale and retail rates for business data services, or to otherwise intervene in the marketplace for wholesale business data services.

261. The Communications Act and Commission precedent provide ample guidance regarding the pricing of wholesale business data services.

Section 201(b) of the Act requires that ''[a]ll charges . . . for and in connection with [interstate or international telecommunications service] shall be just and reasonable . . . .'' Section 202(a) of the Act prohibits ''any unjust or unreasonable discrimination in charges . . . for or in connection with like communication service . . . .'' It has long been the Commission's policy that, under these provisions, ''interstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and . . . [wholesale] customers.'' But, as the D.C. Circuit has explained, ''[b]y its nature, section 202(a) is not concerned with the price differentials between qualitatively different services or service packages. In other words, so far as 'unreasonable discrimination' is concerned, an apple does not have to be priced the same as an orange.''

262. In response to requests for comments on the issue in the *Further Notice,* some commenters offer anecdotal evidence that price caps LECs provide retail services at rates lower than the prices they charge competitive LECs for components of those services. They argue that charging retail rates that are lower than wholesale rates violates the Act's prohibition against unjust or unreasonable discrimination in charges and that we should adopt a rule prohibiting providers from charging more for resale than wholesale services. However, despite competitive LEC assertions to the contrary, we find that there is little concrete evidence that incumbent LECs charge their wholesale customers higher rates than they charge retail customers for like business data services. At most, the record provides selective information regarding a handful of incidents where an incumbent LEC's wholesale pricing policies allegedly impeded a competitive LEC's ability to compete. As such the record provides no basis for us to adopt generally applicable rules governing the application of section 201(b)'s prohibition against unjust or unreasonable practices or section 202(a)'s prohibition against unjust or unreasonable discrimination to alleged problems in the wholesale business data services marketplace.

263. In reaching this conclusion, we also reject requests that we mandate that, as a general matter, wholesale business data services rates must be lower than the retail rates for like services. Certain parties argue that because it costs business data services providers less to provide wholesale services than to provide like retail services wholesale rates should reflect these lower costs. However, any such mandate could have the unintended effect of preventing providers from reducing retail rates to competitive levels, as the provider would then have to reduce its wholesale rates to below those levels.

264. Three commenters suggest potential methods and amounts for an industry-wide discount. Advocates of action on wholesale pricing share an underlying premise, that wholesale services pricing should exclude avoided retail sales expenses. We do not find it necessary to make a finding concerning the accuracy of this premise and decline to set an industry-wide wholesale discount. Incumbent LECs are not required to tailor prices based solely on costs, although rates must be just and reasonable and not unreasonably discriminatory. We expect that continued growth in competition as a result of this Order will have a positive effect on the marketplace without the need for a wholesale discount. Additionally, our section 208 complaint procedures remain available to remedy any claimed anticompetitive or discriminatory behavior.

265. Sections 201(b) and 202(a) do not explicitly require rates to correspond to costs—only that such rates be just and reasonable and not unreasonably discriminatory. Indeed, with any generally available offering, it is unlikely that the costs to provide service to any two customers would be exactly the same, and we do not require carriers to price their offerings based on the myriad of different costs imposed by various customers. In fact, we prohibit carriers from discriminating against similarly-situated customers. The same analysis is true in this situation.

266. Additionally, Sprint and Windstream ask that we ''confirm that carriers cannot avoid [their] resale obligations merely by bundling non-Internet telecommunications services with Internet access or with add-on information services.'' LARIAT asks that we establish rules to prohibit ''refusal to deal.'' We find that these practices do not lend themselves to blanket rules or detailed pricing methodologies, and we therefore reject these requests.

VI. Additional Modernizing Actions

A. Certain Services Described In the Record Are Not Common Carrier Services

267. A number of commenters dispute the accuracy of a seemingly-categorical statement in the *Further Notice* ''not[ing] that business data services are telecommunications services, regardless of the provider supplying the service,'' and going on to assert that ''BDS providers are therefore common carriers . . . subject to Title II in the provision of their services . . . .'' As we discuss below, that terse suggestion in the *Further Notice* does not accurately reflect the nuanced analysis required for such a classification decision. This proceeding is not the appropriate place to make any generalized or comprehensive classification decisions of that sort for business data services. We do, however, discuss the services described in detail in the record by certain providers, which we find to be private carriage offerings based on the facts provided here. In doing so, we reiterate the Commission's longstanding approach to the associated classification issues, guarding against any lingering misunderstandings regarding classification flowing from statements in the *Further Notice.*

1. Background

268. Under the analytical framework for distinguishing between services offered on a common carriage or private carriage basis—commonly known as the '*NARUC* analysis' (or the like) for the court cases from which it derives—common carriage under the Act has two prerequisites: (1) An indifferent holding out of service to all potential users; and (2) the transmission by customers of ''intelligence of their own design and choosing.'' By contrast, ''a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal.'' As the D.C. Circuit explained in *NARUC I,* ''[t]he original rationale for imposing a stricter duty of care on common carriers was that they had implicitly accepted a sort of public trust by availing themselves of the public at large.'' This ''quasi-public character . . . coupled with the lack of control exercised by'' customers of the carriers' services ''was seen to justify imposing upon the carrier'' heightened duties.

269. In the 1996 Act, Congress added new statutory categories of ''telecommunications,'' ''telecommunications services,'' and ''telecommunications carriers'' to the Communications Act. Telecommunications is defined in relevant part as ''the transmission . . . of information of the user's choosing,'' echoing the second prong of the traditional *NARUC* analysis. Telecommunications services, in turn, involve the offering of telecommunications for a fee to the public, which the Commission has found to ''encompass only telecommunications provided on a

common carrier basis,'' relying on the longstanding *NARUC* analysis for that evaluation. As the Commission found, this interpretation gives meaning to the 'to the public' criteria in the telecommunications service definition in a manner that accords with the relevant legislative history. Because telecommunications services meet the standard for common carriage, providers of telecommunications services—*i.e.,* telecommunications carriers—are acting as common carriers to the extent that they are providing such services.

2. Discussion

270. Against the backdrop of the Commission's established approach to addressing private carriage, common carriage, and telecommunications service classification issues, we agree with commenters that statements in the *Further Notice* were unduly broad insofar as they could be read to suggest that all business data services necessarily are telecommunications services subject to common carrier regulation. Our approach to such classification issues requires an understanding and analysis of the facts regarding particular service offerings that the record underlying the *Further Notice* was lacking. To the contrary, as discussed below, the record generated in response to the *Further Notice* demonstrates that some business data services currently are being offered on a private carriage basis in the marketplace today. The record is not sufficiently detailed and comprehensive to provide a basis to broadly classify all business data services. By addressing examples where particular providers submitted more detailed information regarding certain of their services, however, we can mitigate the risk of continued uncertainty or confusion regarding the Commission's approach to such classification questions that potentially were introduced by statements in the *Further Notice.*

271. *Affirmative Arguments for Private Carriage Classification of Certain Services.* Comcast and Charter each submitted detailed information about certain categories of services sufficient to enable us to classify those as private carriage offerings based on the record here. With respect to its wholesale cellular backhaul service and E-Access service, Comcast explains that it makes individualized decisions whether it will, in fact, offer such services in a given instance or to a given customer. Comcast describes its offering of retail Ethernet transport similarly, explaining that it does not hold out such services to all interested buyers. For its part, Charter explains that particularly in the case of business data services provided to enterprise customers, it makes individualized decisions whether to offer service to given customers. The case-by-case decisions about whether to offer these services to a given customer described by Comcast and Charter stand in contrast to the ''quasi-public character'' that is a ''critical'' premise of common carrier classification—and the associated heightened duties—identified by the D.C. Circuit in *NARUC I.* The absence of this critical factor is central to our private carriage analysis of these services.

272. Comcast and Charter each further explain that they make highly-individualized decisions regarding any rates and terms they do offer for the relevant categories of services in order to meet the particular needs of a given customer. The plausibility of these descriptions is reinforced by the fact that the customers for these services typically include large wireless carriers, other large service providers, or enterprises. The record reveals that such entities are likely to have the size and sophistication to demand uniquely-tailored wholesale or retail offerings that enable them to meet particularized needs. Although a few commenters dispute the private carriage claims in the record, for the reasons described below in our response to those arguments, we are not persuaded that they require a different conclusion with respect to the services we classify as private carriage here. Thus, considering the totality of the circumstances, we conclude that the Comcast and Charter services identified above, when offered in the manner described in the record, constitute private carriage services—not common carrier services or telecommunications services.

273. As other examples, Mediacom, ACS, and BT Americas also argue that services they each provide constitute private carriage. Although the information they submitted is not quite as detailed or specific as that of Comcast and Charter, we nonetheless agree that, as described, these services reflect private carriage offerings. Notably, each of these providers explains with respect to its relevant services that, rather than offering service to all potential customers and offering rates and terms indifferently, they instead make individualized decisions about whether and on what terms to offer service. There also is little indication in the record of any disagreement that these particular providers are offering service on a private carriage basis, as they contend. Building on our analysis for Comcast and Charter above, under our evaluation of the totality of the evidence here, we likewise conclude that the services described by Mediacom, ACS, and BT Americas are private carriage when offered as these providers describe.

274. *Responses to Arguments Disputing that Those Services are Held Out on a Private Carriage Basis Under the* NARUC *Analysis.* Some commenters purport to provide evidence that business data service providers generally, or Comcast and Charter in particular, offer business data services in a manner that reflects an indifferent holding out of service to the public, and thus should be classified as common carrier telecommunications services. We reject such claims in the context of the specific providers' services addressed above for a number of reasons.

275. First, generalized statements about marketplace trends broadly, or Comcast's or Charter's networks or services generally—but which do not purport to address more specifically the particular services we discuss above—do not provide a basis to reject the evidence put forward by Comcast, Charter or the other providers addressed above that is specific to those providers' services. Even assuming *arguendo* that certain characterizations of the marketplace as a whole or particular providers' networks or offerings might commonly hold true in a general sense, we find no basis to assume that they hold true with respect to particular service offerings sufficient to overcome more specific contrary evidence.

276. Second, we are unpersuaded by arguments that particular aspects of how these providers offer service do not inherently require a classification of private carriage as to the offering of the relevant services, or can be consistent with common carriage. We do not base our decision on any single aspect of the manner in which Comcast, Charter, Mediacom, ACS, or BT Americas offer the specified services. Rather, we confirm those providers' claims of private carriage based on the totality of the evidence before us describing the manner in which the relevant services are offered. Under that analysis we find sufficient evidence of individualized determinations whether to offer service to given customers and, when services are offered, individualization on a sufficient range of key terms of the offering to warrant a finding of private carriage. Thus, whether any subset of actions taken by those providers would or would not be sufficient to support a private carriage classification is not an issue we confront or address here.

277. We also find a variety of those claims overstated, even on their own terms. For example, some commenters

cite marketing materials or other statements from certain of the providers discussed above as undercutting these providers' claims that, as to the relevant services, the providers make individualized decisions whether and on what terms to deal. In many cases, the cited materials or statements, while focused on particular services or categories of services, nonetheless still are too high-level or generalized to provide meaningful insight into the more granular details of how particular services are offered in practice. Even materials or statements purporting to speak to particular service offerings on a somewhat more granular basis do not lend themselves to simplistic analysis. Where service is offered via a tariff, the analysis can be more straightforward not only because the filed tariff doctrine requires the tariffed rates and terms to be controlling, but even more fundamentally because only common carrier services may be offered on a tariffed basis. Outside the tariffing context, we agree with commenters that marketing materials or the like might well be used merely to make it known that a given company is a potential provider of particular services without representing a formal offer of service to all customers to which the service might legally and practicably be of use. On their face, we do not find the marketing materials or other provider statements cited here to represent a formal holding out of the services addressed above to all potential users. Nor are we persuaded by the record that, in practice, Comcast, Charter, Mediacom, ACS, or BT Americas treat those statements or marketing materials in such a manner. Insofar as the statements and marketing materials thus are compatible with those providers' representations regarding whether and how they offer the relevant services, we are not persuaded to reject the providers' representations on the basis of such materials and statements.

278. Also overstated are commenters' claims regarding common technical characteristics or terms of agreements, whether in marketing materials, ''rate sheets,'' or from practical interactions with Comcast, Charter, Mediacom, ACS, or BT Americas. These claims do not dissuade us from the private carriage determination we make as to those providers. Such considerations can be relevant to the classification analysis, but the evidence before us in that regard does not require a common carrier classification here. Even to the extent that such evidence here directly applies to the particular providers' services addressed above, we are persuaded that, in significant part, they do not reflect a formal offer of service at particular rates and terms that these providers genuinely anticipate potential customers accepting, but merely serve a starting point for negotiations of relevant rates and terms. In addition, to the extent that Verizon identifies certain similarities in its interactions with a variety of different service providers (when acting as a customer) and with its own operation (when acting as a service provider), that is distinct from the relevant question of whether a single provider treats all potential customers similarly and thus should be classified as a common carrier. Further, some uniformity in technical characteristics in a given provider's service offering appears largely inevitable given the need to conform to industry standards, common equipment, and the like, and if that were enough to warrant a finding of common carriage, the notion of private carriage could be rendered a nullity. Additionally, issues regarding the rates and terms of any offering are distinct from the question of whether any offering (whatever the rates and terms) is made to all potential users of the service—a ''critical'' issue under *NARUC I*—and do not implicate our findings in that regard discussed above. Thus, while relevant to consider as part of arguments about a providers' individualization in rates and terms, under the totality of the circumstances here, we conclude that the alleged ''uniformity'' in service offerings cited by commenters is limited and does not preclude our private carriage classification for Comcast, Charter, Mediacom, ACS, and BT Americas.

279. Third, we reject common carriage claims based on asserted similarities between particular aspects of these providers' offering of service and the manner in which incumbent LECs or others offer service. We are not persuaded that comparisons or analogies to how other providers such as incumbent LECs or others have offered service necessarily are illuminating. Although there are a variety of prior decisions where the Commission has suggested that business data services are telecommunications services, those decisions are best understood as descriptive of the agency's general sense of how providers—and particularly incumbent LECs—were, in practice, offering such services at the time. They do not expressly claim (or justify) any formal, comprehensive classification of business data services under our longstanding classification approaches. Those prior decisions thus also do not prejudge the classification of services being offered in the marketplace today or in the future—whether by competitive providers or incumbent LECs—which potentially could be appropriately classified as private carriage, as well. We need not and do not resolve such broader classification issues here.

280. The record also does not demonstrate that the Commission has any statutory authority to compel common carriage offerings of what otherwise are private carriage business data services—to compel a provider to ''offer[]'' business data services ''for a fee directly to the public'' if the provider has not voluntarily done so. The precedent cited by commenters advocating such a compulsion arose where the Commission was exercising licensing authority. By contrast, the providers that are the focus of private carriage arguments in the record here—particularly cable operators—do not require any Commission license or authorization before introducing domestic, private carriage business data services, so those orders do not demonstrate Commission authority as relevant here. Instead, commenters merely assert their view that doing so would be desirable as a way to advance various policy goals. Absent any statutory authority, we cannot compel common carriage for what otherwise are private carriage offerings.

281. *Responses to Arguments Advocating Compelled Common Carriage or a Different Classification Approach.* We also reject arguments for requiring that some or all business data services be offered on a common carriage basis as telecommunications services even where providers otherwise have elected to offer them on a private carriage basis. Although the traditional *NARUC* analysis recognizes the possibility that a service provider might be under a legal compulsion to offer service on a common carrier basis, the record does not demonstrate grounds for imposing such a requirement here. As a threshold matter, we agree with commenters that the *Further Notice* did not provide adequate APA notice for the Commission to compel common carriage for business data services generally, or to do so for some segment of the industry, via the adoption of a legislative rule of general applicability.

282. In addition, we also find insufficient the policy grounds cited by commenters advocating compelled common carriage here. As a number of commenters recognize, our precedent generally has identified market power as a prerequisite for potentially compelling common carriage, but the record here

does not reveal that the specific providers offering particular business data services on a private carriage basis have market power with respect to those services. While arguing that the Commission also can compel common carriage based on other public interest considerations, Public Knowledge *et al.* nonetheless acknowledge that even then the Commission must consider ''whether the public interest benefits outweigh the costs of applying regulation.'' Yet even that standard is not met on the record here. Although some commenters seek to minimize the perceived extent of regulatory burdens that would flow from compelled common carriage, the Commission itself has acknowledged that meaningful burdens do, in fact, flow from common carrier treatment. Some service provider commenters also explain that they have relied on their ability to operate on a private carriage basis, and the flexibility it provides, when electing to enter the marketplace with particular business data service offerings. Thus, we find it likely that Commission action broadly treating as common carriage services that providers wish to offer as private carriage would discourage investment in such services. At the same time, we find any alleged countervailing public interest benefits entirely speculative. The generalized claims in the record about the need for common carriage, even assuming *arguendo* that they held true in some cases, do not demonstrate the nature and extent of any benefits (if any) that would flow from compelling common carriage by the specific providers discussed above as to the specific services that we find here to be offered on a private carriage basis. We thus find no policy rationale for compelling common carriage by any particular providers here.

283. For similar reasons, we decline to adopt a new approach to classification here that departs from our longstanding reliance on the *NARUC* analysis as some commenters propose. Commenters advocating that we classify business data services solely through our own interpretation of the statutory ''telecommunications service'' definition do not put forward a theory of interpretation that we find reasonable. Instead, these commenters focus to such a degree on the desired outcome of such a classification approach that we are left unclear how the Commission could achieve that outcome without adopting such a sweeping interpretation of ''telecommunications services'' as to virtually eliminate any distinction between offerings ''to the public'' and private offerings. Thus, as a matter of statutory construction, the record does not persuade us to depart from our longstanding classification approach, which gave full meaning to the relevant statutory language consistent with the legislative history.

284. Independently, we are not persuaded by policy arguments that we should depart from our longstanding classification approach even if we could do so as a matter of statutory interpretation. The arguments in favor of such action are, like the arguments commenters raised in favor of compelled common carriage, generalized assertions about providing perceived benefits or remedying perceived risk of harms that are divorced from any specific circumstances where application of our longstanding classification approach would yield private carriage classifications. As we explained when rejecting proposals to compel common carriage, such arguments do not demonstrate what public benefits would flow if the specific services of certain providers that we find to be offered on a private carriage basis—or those of other providers not addressed here—were instead classified as common carriage. That shortcoming is even more problematic for any argument to revisit the Commission's classification approach, because absent some theory for limiting the interpretation just to this context, increasing the reach of the telecommunications service definition would also result in regulatory burdens for providers of other communications services that would be classified as common carrier telecommunication services under that interpretive approach. We thus find no grounds for adopting an approach to service classification here that departs from our longstanding reliance on the *NARUC* analysis.

285. Given that we do not depart here from our longstanding approach to evaluating private carriage and common carriage classification, we also continue to adhere to our precedent under which shared use arrangements typically were classified as private carriage. Consequently, this addresses the concerns of some commenters that research and education (R&E) networks that historically had been treated as private carriage under that framework might newly be classified as common carrier telecommunications services under a new approach to classification.

B. Expiration of the Section 214 Interim Wholesale Access Rule

286. By this Order, the Commission ''identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services [business data services] are just and reasonable.'' As a result, the interim wholesale access rule for discontinued TDM-based business data services and unbundled network element platform (UNE–P) replacement services (also called commercial wholesale platform services) established in the *2015 Technology Transitions Order* will expire when these rules and policies become effective. We decline to extend the interim rule for UNE–P replacement services.

287. *Background.* UNE–P replacement services are wholesale voice services that consist of a DS0 loop, switching, and shared transport, and allow competitive carriers to provide local exchange service without facilities. In the *2015 Technology Transitions Order,* the Commission concluded that, as a condition to receiving authority to discontinue a legacy TDM-based service used as a wholesale input by competitive providers, an incumbent LEC must provide wholesale access to UNE–P replacement services and business data services at DS1 speed and above on reasonably comparable rates, terms, and conditions to any requesting telecommunications carrier. This interim rule will expire when the requirements established in this Order are published in the **Federal Register** and become effective. In the *2015 Technology Transitions Further Notice,* the Commission asked whether it should extend the interim rule for UNE–P replacement services only for a further interim period beyond completion of this proceeding, and if so, for how long. The Commission ''recognize[d] that incumbents are currently offering such commercial arrangements in TDM on a voluntary basis'' and further ''recognize[d] the benefits of agreements reached through market negotiations.''

288. *Discussion.* Consistent with the Commission's statement in the *2015 Technology Transitions Order* that ''the special access proceeding provides a foreseeable and definitive point in the future at which we can reassess the efficacy and necessity of the [interim] requirement,'' we have reevaluated the continued need for the interim rule. We determine that the interim rule is no longer necessary, and we will not extend it beyond the timeline for expiration established in the *2015 Technology Transitions Order.* In reaching this conclusion, we return to the Commission's longstanding policy of ''encourag[ing] the innovation and investment that come from facilities-based competition.'' Thirteen years ago, the Commission found that ''[i]t is now

clear, as discussed below, that, in many areas, UNE–P has been a disincentive to competitive LECs' infrastructure investment.'' Today, we conclude that if we maintained and extended the interim rule, it would have a similar negative impact on incumbent LEC deployment of, and transition to, next-generation network infrastructure and innovative IP services that benefit all Americans, businesses and consumers alike. We will no longer deter investment in next-generation facilities or distort the market by extending the interim rule. Although Granite argues that UNE–P rate regulation was more stringent than the ''reasonably comparable'' interim rule, the difference is merely one of degree rather than of kind.

289. We find arguments raised by proponents of extending the UNE–P replacement rule today to be highly similar to arguments that the Commission rejected in 2015 when declining to set a further end date for the interim rule. Granite and others have known since the interim rule's adoption that the Commission intended the condition ''to be interim and short-term in nature''; indeed, the Commission emphasized that ''consistent with that goal we have adopted a specific and foreseeable endpoint.'' In the *2015 Technology Transitions Further Notice* the Commission inquired only whether it would be appropriate to require an extension for a further interim period to the extent ''wholesale arrangements for voice are unlikely.'' Based on our conclusions herein, we decline to alter the end date of the interim rule. We find some merit to the argument that it did not make sense to specifically tie the interim rule's termination as to UNE–P replacement services to the end of this proceeding as opposed to a fixed end date. However, unlike proponents of the interim rule, we find that the appropriate remedy for this arguably erroneous decision is to permanently terminate the interim rule as expeditiously as possible.

290. We are not persuaded that competition will be harmed by the termination of the interim rule. Proponents of the interim rule ask us to ensure that the specific wholesale inputs on which they depend are available at ''reasonably comparable'' rates, terms, and conditions if and when incumbent LECs transition those inputs fully to Internet Protocol (IP). But ''[o]ur statutory duty is to protect efficient competition, not competitors.'' Companies that offer multilocation enterprise voice service—such as Granite and the members of the Wholesale Voice Coalition—contend that their service is difficult to provide without access to regulated inputs due to the high cost of serving some individual customer locations, the typically low number of lines per customer location, and the need to serve numerous locations per customer. Given these companies' multilocation business model, it is plausible that they could absorb a loss to serve some customer locations yet still find serving that customer worthwhile. However, neither Granite nor any other party has linked the challenges of serving some individual customer locations to competitive or customer impact. For instance, Granite has not quantified how many of its customers would become uneconomical to serve without the interim rule, shown how it would choose among constructing its own facilities, reselling cable, and reselling incumbent LEC services in the absence of the rule, nor shown how these issues would adversely affect overall competition in the market. Instead, supporters of extending the interim rule focus on how it would adversely impact them as individual competitors and call for *us* to conduct a detailed examination of the marketplace for wholesale voice platform services and—if we are unwilling to cement the rule permanently in place—extend the interim rule until the study is complete. We decline to expend public resources to further distort the market, raise costs associated with the transition to IP, deter facilities investment, and introduce regulatory uncertainty.

291. We find the remainder of the arguments in the record in support of extending the condition similarly unpersuasive. Granite has argued that its overall costs would increase 159 percent if it were required to convert from purchasing UNE–P replacement services to resold incumbent LEC voice lines, but it has not demonstrated that absent the interim rule such a conversion would be necessary, nor supported that assertion beyond submitting a generalized declaration. We are equally unpersuaded by a June 2015 study that purports to find that loss of wholesale access to incumbents' voice services would result in customer harm of between $4.443 billion and $10.168 billion per year. This calculation is based on Granite's estimate that competitive carriers provide $30 per line of value to their customers, a remarkable assertion for which the study provides no particularized or verifiable support. Moreover, proponents of extending the interim rule continue to rely on the same data submitted in support of the initial adoption of the interim rule.

292. Finally, we note that arguments in favor of extending the interim rule are premised on the expectation that wholesale voice arrangements will not occur absent regulatory action. We disagree. Our view is informed significantly by developments subsequent to the *2015 Technology Transitions Order.* First, we anticipate that growing intermodal competition will continue to diminish incumbent LECs' once-central role in the voice marketplace. Second, incumbent LECs—in particular, BOCs such as AT&T, Verizon, and CenturyLink—continue to offer UNE–P replacement services in TDM on a voluntary basis under commercially negotiated terms. In the course of forbearing from local switching and shared transport unbundling obligations under section 271 in the *2015 USTelecom Forbearance* proceeding, the Commission concluded that it did ''not find persuasive Granite's argument that BOCs would never offer UNE–P replacement services [in TDM] but for the section 271 'backstop.' '' Since that time, neither Granite nor others have shown that prices or availability of TDM-based UNE–P replacement services have changed as a result of the forbearance. We see no convincing reason in the record to assume that the market would operate differently in IP. Granite attempts to show otherwise by pointing to negotiations in which AT&T refused Granite's request to include a clause acknowledging the interim rule. However, the interim rule was a time-limited regulatory obligation independent of any contract. We fail to see how AT&T's refusal of Granite's requested belt-and-suspenders protection is probative. Similarly, we do not see Granite's barebones allegation of ''one ILEC's refusal to engage in negotiations with competitive carriers about access to replacement IP voice services'' as significantly probative. Carrier practices may change over time, particularly in this early phase of the IP transition, and one carrier's practices may be suggestive, but are not demonstrative of the entire market. Given that incumbent LECs offer UNE–P replacement services in TDM in a manner that proponents of the interim rule deem satisfactory (as demonstrated by their goal of obtaining mandated ''reasonably comparable'' rates in IP), and assuming as Granite does that ''IP-based services . . . *cost less* to provide than the TDM services,'' we anticipate that incumbent LECs will make similar offerings available in IP.

293. While our predictive judgment regarding the availability of wholesale voice inputs from incumbent LECs in IP influences our decision, it alone is not dispositive. Our overarching goal here is to increase incentives for and remove barriers to facilities investment and the IP transition. We therefore allow the interim rule to terminate as scheduled. We also reject the request to prohibit non-disclosure agreements with respect to UNE–P replacement services as unsupported by the record, inconsistent with our decision to reduce regulatory intervention, and beyond the scope of the *Further Notice.*

VII. Other Issues

A. Denying Applications for Review

294. The Commission delegated authority to the Bureau to implement the *2015 Collection.* In carrying out this responsibility, the Bureau released the *Data Collection Implementation Order* and the *Data Collection Reconsideration Order,* making certain modifications and clarifications to the *2015 Collection* requirements. CenturyLink and USTelecom each filed applications for review (AFRs), seeking reversal of certain Bureau actions in these orders. We deny these applications. We conclude that the CenturyLink AFR is moot in light of the reforms adopted in the Order, and we deny the USTelecom AFR because we find that the Bureau acted within its delegated authority in limiting the data collection to one year.

295. On September 18, 2013, the Bureau released the *Data Collection Implementation Order* clarifying the scope of the collection, providing instructions on how to respond to the data collection questions, and providing a list of all modifications and amendments to the data collection questions and definitions. These actions were based on feedback received from potential respondents, including the PRA comments filed with the Commission during the 60-day public comment period, and the Bureau's further internal review. The *2015 Collection* required providers to report locations with connections. In the *Data Collection Implementation Order,* the Bureau clarified that this meant the connections were considered capable of providing a dedicated service for the purposes of reporting locations. The Bureau further clarified that cable system operators in their local franchise areas were required ''to report those *Locations* with *Connections* owned or leased as an *IRU* (*i.e.,* an indefeasible right of use) that are connected to a *Node* (*i.e.,* headend) that has been upgraded or was built to provide Metro Ethernet (or its equivalent) service, . . . regardless of the service provided over the *Connection* or whether the *Connection* is idle or in-service.'' For connections not linked to a MetroE-capable node, cable system operators were only required to report in-service connections used ''to provide a *Dedicated Service* or a service that incorporates a *Dedicated Service* within the offering as part of a managed solution or bundle of services sold to the customer.''

296. On October 22, 2013, CenturyLink filed an AFR, seeking reversal of the Bureau's decision in the *Data Collection Implementation Order* to exclude from the collection those cable system operator locations neither used to provide a dedicated service nor connected to a MetroE-capable node. CenturyLink argued the decision would ''result in a failure to account fully for robust and growing cable-based competition'' and the Bureau thus exceeded its delegated authority. ACA, NCTA, and Sprint opposed the CenturyLink application for review.

297. Following the release of the *Data Collection Implementation Order,* the Bureau submitted the collection to OMB for review as required by the PRA, and after a lengthy review process, OMB approved the collection subject to modifications on August 15, 2014. The most notable modifications to the collection were: (1) Collecting data for a single year, 2013, instead of data for two years, 2010 and 2012; (2) reducing the mapping requirements for cable companies to report only fiber routes making up the local transport network and not reporting feeder routes to end user locations; (3) modifying the definition of purchasers required to respond to exclude entities spending less than $5 million dollars on business data services in 2013; and (4) making many of the questions directed at purchasers optional. On September 15, 2014, the Bureau released the *Data Collection Reconsideration Order,* which implemented these changes to the collection.

298. On October 24, 2014, USTelecom filed an application seeking Commission review of the Bureau's modification of the collection, in the *Data Collection Reconsideration Order,* to one year's worth of data as approved by OMB pursuant to the PRA. USTelecom asserted this change ''exceeds the Bureau's delegated authority, and threatens to undermine the Commission's goals for the data collection effort.'' Oppositions to the USTelecom AFR were filed by Sprint and a coalition of competitive LECs, urging the Commission to reject the application as a meritless tactic to delay the proceeding.

299. We first deny the CenturyLink AFR as moot in light of the reforms adopted in this Order. CenturyLink's concern was that the Bureau's decision would result in the Commission's failing to take into account the growing cable competition present in the business data services market. By using Form 477 data in addition to the *2015 Collection* data to craft the competitive market test, the Commission has ensured that the competitive market test fully takes cable competition into account, both in this initial test and in future updates.

300. We also deny the US Telecom AFR. In the *Data Collection Order,* the Commission directed the Bureau that ''[t]o the extent the Bureau cannot obtain Office of Management and Budget approval for some portion of the data collection . . . to proceed with the remainder of the collection.'' The OMB approval restricted the data collection to one year. The Bureau thus properly proceeded pursuant to Commission delegation and continued with the data collection as allowed by OMB.

B. Addressing Motion to Strike

301. On June 17, 2016, CenturyLink et al. filed a motion seeking to strike from the record the analysis contained in the Rysman Paper that was attached to the *Further Notice* and other analyses contained in the record and *Further Notice* that were based on the *2015 Collection.* According to CenturyLink et al., the Rysman Paper and *Further Notice* were based on flawed data regarding cable entry and capability in the market, which massively distorted the competitive landscape evaluated by Dr. Rysman. USTelecom filed comments supporting the motion. In light of the reforms adopted in the Order, which rely on cable entry as reported in the Form 477 data, we conclude that the motion to strike is moot.

302. CenturyLink et al.'s motion to strike is in response to various cable reporting errors contained in the *2015 Collection.* After release of the *Further Notice,* the Commission discovered that four cable companies—Comcast, Charter, Cox, and Legacy TWC—had failed to report all locations connected to Metro-E capable headends. These companies did report in their original submissions each location to which they provided business data services in 2013. Subsequent to this discovery, these companies supplemented their submissions, as necessary, with information to indicate, or to allow the Commission to determine, those census blocks with non-residential locations

serviceable by Metro-E headends in 2013.

303. Commission staff have already accounted for the supplemented cable information in the context of the rulemaking proceeding and updated its analysis accordingly. Moreover, the competitive market test relies heavily on data from the Form 477 to determine where cable competition is present in the business data services market and has based significant regulatory relief on the presence of a single cable provider located in 75 percent of the census blocks in a county. The arguments from CenturyLink et al. are based on the concern that the Commission would not have the appropriate evidence of cable competition in evaluating the business data services market. Because we have included the Form 477 data in our analysis and based significant regulatory relief on the presence of cable competition, we conclude that the motion to strike has been rendered moot and is therefore denied.

C. Addressing Previously-Filed Motion Seeking Additional Information on Fiber Maps

304. The Bureau on September 18, 2015, released an order clarifying and modifying the Protective Order initially adopted for the *2015 Collection.* In that order, the Bureau declined to make available to authorized parties fiber mapping files showing ''the starting points for connections to end user locations,'' ''the transmission paths,'' or ''the connections to end user locations'' in order to mitigate potential risks to critical communications infrastructure. The Bureau as an alternative offered to ''provide maps depicting the presence of fiber by listing all the providers with fiber facilities in a census block or by indicating a connected end-user location's distance to fiber without including information on the specific route of the fiber.''

305. On March 17, 2016, AT&T filed a motion seeking access to the highly confidential fiber route maps submitted by competitive providers in response to the *2015 Collection.* Denying access, according to AT&T, would violate the Administrative Procedure Act by not allowing it to refute claims by competitive LECs that competition only exists at the building level because AT&T could not ''show where the CLECs have actually deployed fiber.'' Specifically, AT&T asserted it could not refute arguments by showing ''precisely how many locations with special access demand are within the CLECs' own stated distances for lateral build-out from their fiber facilities'' or ''calculate the full reach of each competitor's network.''

306. At the time AT&T filed its motion, the Commission staff had only made available a data file identifying the census blocks in which fiber routes reported by competitive providers were present. On March 30, 2016, the Bureau made available an additional data file providing the distances from each unique reported location to each competitive provider's fiber network. AT&T, its economists, and other commenters have relied on this information in advocating their positions in this proceeding. We find the alternative data file that Commission staff provided addresses AT&T's identified concerns, and we therefore deny the motion.

D. Severability

307. All of the rules and policies that are adopted in this Order are designed to work in unison to ensure that rates for business data services are just and reasonable while also encouraging facilities-based competition and facilitating technology transitions. However, each of the separate reforms we undertake in this Order serves a particular function toward these goals. Therefore, it is our intent that each of the rules and policies adopted herein shall be severable. If any of the rules or policies is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

E. Directive to Bureau To Correct Errors and Omissions

308. Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we direct the Wireline Competition Bureau to make any further rule revisions extending only to technical and conforming edits to ensure that the reforms adopted in this Order are properly reflected in the rules. If any such rule changes are warranted, the Bureau shall be responsible for such changes. We note that any entity that disagrees with a rule change made by the Bureau will have the opportunity to file an Application for Review by the full Commission.

309. This Order will require price cap incumbent LECs and their customers to make operational changes that will raise technical issues, many of which will only come to light as the Order begins to be implemented. We direct that, in resolving these issues, the Bureau shall make sure that the operational changes properly reflect the reforms adopted in the Order.

310. In addition, we take this opportunity to make several non-substantive rule amendments. We find that notice and comment is unnecessary for rule amendments to ensure consistency in terminology and cross references across various rules, correct inadvertent failures to make conforming changes when prior rule amendments occurred, and to delete references to rules governing past time periods that no longer are applicable.

VIII. Procedural Matters

A. Paperwork Reduction Act Analysis

311. This document contains new information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

B. Congressional Review Act

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

C. Final Regulatory Flexibility Analysis

313. As required by the Regulatory by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Further Notice of Proposed Rulemaking (*Further Notice*) for the business data services (BDS) proceeding. The Commission sought written public comment on the proposals in the *Further Notice,* including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Report and Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

1. Need for, and Objectives of, the Rules

314. In the *Further Notice,* the Commission proposed to replace the existing business data services

regulatory structure with a new technology-neutral framework and sought comprehensive comments on the proposed new framework. This Order, therefore, provides a new framework for business data services that minimizes unnecessary government intervention and allows market forces to continue working to spur entry, innovation and competition.

315. Based on the *2015 Collection,* the Commission makes findings as to the relevant market for analysis, trends in competition, and the presence of market power. Significantly, the Commission finds competition in the provision of the following business data services to be sufficiently widespread that pricing regulation would be counterproductive: Packet-based business data services, optical transmission services with bandwidths in excess of a DS3, and TDM transport services. The Commission, therefore, declines to adopt, and where applicable ends, ex ante pricing regulation for such services. With respect to the provision by price cap incumbent LECs of DS1 and DS3 end user channel terminations, the Commission adopts the following competitive market test. For a particular county if: 50 percent of the buildings in that county are within a half mile of a location served by a competitive provider based on the *2015 Collection* or 75 percent of the census blocks in a county have a cable provider present based on Form 477 data, the Commission finds that ex ante pricing regulation of that county would be counterproductive. The services relieved of ex ante pricing regulation will be subject to permissive detariffing for a period of 36 months at which time they will be subject to mandatory detariffing.

316. For counties that do not meet the competitive market test, the Commission will retain price cap regulation for incumbent LEC provision of DS1 and DS3 end user channel terminations, and certain other business data services, and apply the principles of Phase I pricing flexibility to these counties, which will permit the carriers to offer volume and term discounts, as well as contract tariffs. These services will also be subject to a productivity-based X-factor of 2.0 percent and restrictions on the incumbent LEC's use of non-disclosure agreements.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

317. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

318. The Chief Counsel did not file any comments in response to this proceeding.

4. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

319. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

a. Total Small Entities

320. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, as of 2013, the SBA estimates there are an estimated 28.8 million small businesses nationwide—comprising some 99.9% of all businesses. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2012 indicate that there were 90,056 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 89,195 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

b. Wireline Providers

321. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent LEC providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent LEC service are small businesses that may be affected by rules adopted pursuant to the Order.

322. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

323. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to

have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, seventy have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the Order.

324. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition specifically for providers of interexchange services. The closest NAICS Code category is Wired Telecommunications Carriers as defined in this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 carriers have reported that their primary telecommunications service activity was the provision of interexchange service. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by rules adopted pursuant to the Order.

325. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Order.

326. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. All 193 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

327. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

328. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[1] Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

329. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

330. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of

these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

c. Wireless Providers—Fixed and Mobile

331. The rules adopted in the Report and Order may affect wireless providers. As a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

332. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

333. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

334. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

335. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

336. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

337. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

338. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

339. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163

C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

340. *Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

341. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

342. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

343. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

344. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

345. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

346. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross

revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

347. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

348. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

349. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

350. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

351. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

352. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2012, which are the most recent Census data available, show that there were 967 firms that operated that year. Of those 967, 955 had fewer than 1,000 employees, and 12 firms had more than 1,000 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

353. *Advanced Wireless Services (AWS) (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are

comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

354. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

355. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

356. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2012, which are the most recent Census data available, show that there were 967 firms that operated that year. Of those 967, 955 had fewer than 1,000 employees, and 12 firms had more than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

357. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

358. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

359. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

360. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 2,336 licensees are

small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

361. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

362. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

363. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

364. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

d. Satellite Service Providers

365. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

366. The first category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite

telecommunications.'' The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million.[1] For this category, Census Bureau data for 2007 show that there were a total of 570 firms that operated for the entire year. Of this total, 530 firms had annual receipts of under $30 million, and 40 firms had receipts of over $30 million. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

367. The second category of Other Telecommunications comprises, *inter alia,* ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.'' For this category, Census Bureau data for 2007 show that there were a total of 1,274 firms that operated for the entire year. Of this total, 1,252 had annual receipts below $25 million per year. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

e. Cable Service Providers

368. The description above of wireline providers should encompass cable service providers that also provide business data services. Out of an abundance of caution, we describe cable service providers below as well as other types of firms that may provide broadband services, including MDS providers and utilities, among others.

369. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

370. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

371. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

f. Electric Power Generators, Transmitters, and Distributors

372. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of ''establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees. Based on this data, a majority of these firms can be considered small.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

373. *Recordkeeping and Reporting.* The rule revisions adopted in the Order include changes that will necessitate affected carriers to make various revisions to business data service tariffs and Tariff Review Plans. For example, packet-based BDS, transport services, and DS1 and DS3 end user channel terminations in counties that are deemed competitive will be relieved of

price cap regulation and will be subject to permissive detariffing for a period of 36 months at which time they will be subject to mandatory detariffing. The Order also requires price cap incumbent LECs to freeze the rates for DS1 and DS3 end-user channel terminations in newly deregulated counties for six months. This freeze does not apply to services that are detariffed.

374. In addition, the Commission amends the price cap rules to allow all price cap LECs in non-competitive counties to lower their rates through contract tariffs and volume and term discounts in a manner consistent with the Commission's current Phase I pricing flexibility rules. These incumbent LECs will be required to maintain generally available tariffed price cap regulated rates available to all subscribers. For the small number of counties that had received Phase II pricing flexibility that are now treated as non-competitive by the Order's competitive market test, those price cap carriers will be permitted to retain Phase II relief for those counties but will be required to offer generally available rates for those services as long as those services remain under tariff.

375. The Commission also incorporates a productivity-based X-factor of 2.0 percent for DS1 and DS3 end user channel terminations, and certain other business data services, subject to price cap regulation on a going-forward basis. Affected LECs will be required to revise their rates and tariff review plans, including adjustments to price cap indices, for business data services in filings with the Commission to reflect the new X-factor. These revisions are required of all affected carriers, regardless of entity size. The adopted rule revisions will facilitate Commission and public access to the most accurate and up-to-date tariffs as well as lower rates paid by the public for the affected services.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

376. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

377. *Competitive Market Test.* The Commission proposed to replace the existing framework for granting regulatory relief to incumbent LECs in price cap areas with a multi-dimensional competitive market test to identify specific markets as competitive or non-competitive, thereby dictating the level of applicable regulation for both circuit-based and packet-based business data services. The Commission also sought comment on the separate but related issue of whether in non-competitive markets, heightened regulation, including possible restrictions on rates, terms and conditions, should apply to just the market leader or additional providers, which could have potentially included a substantial number of small businesses.

378. In the Order, the Commission explains why it adopts a test that departs from the proposals in the *Further Notice.* Rather than intrusive pricing regulation, it takes a dynamic and forward-looking approach to evaluating the benefits and costs of regulation. It identifies specific markets as competitive or non-competitive and applies regulation only where competition is expected to materially fail to ensure just and reasonable rates. The result is a simple, sustainable framework that is far less complicated than the market test proposal originally contemplated. The Commission adopts a structure that eliminates unnecessary pricing regulation for a significant portion of the business data services provided by price cap incumbent LECs to allow competition to promote increased efficiencies, investment, and growth in new technologies and services to benefit consumers and business. Additionally, the Commission declines to impose rate regulation on other business data services providers besides the market leader. In particular, unnecessary regulation exacts administrative compliance costs on carriers that reduce capital available for building new networks and infrastructure, inhibiting competitive entry and deployment.

379. *Packet-based Services.* The Commission declines to re-impose any form of price cap or benchmark regulation on packet-based business data services. The market analysis does not show compelling evidence of market power in incumbent LEC provision of packet-based business data services, particularly for higher bandwidth services. Moreover, even if the record demonstrated insufficiently robust competition, proposals to apply price cap regulation to packet-based services were complex and not easily administrable and did not reflect the fact that costs to serve individual customers vary.

380. *Anchor or Benchmark Pricing.* The Commission minimizes the economic impact of its rules on small entities first by declining to impose anchor or benchmark pricing regulation on incumbent LEC packet-based business data services. This eliminates the proposed requirement to calculate anchor or benchmark prices for a wide range of packet-based business data services, and to post publicly generally applicable rates, terms and conditions. Because our market analysis shows that packet-based business data services are subject to competition, anchor or benchmark pricing would be unnecessary and could actually inhibit investment in this dynamic market.

381. *X-factor.* Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year, which become effective on July 1. The annual filings include submission of tariff review plans that are used to support revisions to the rates, including revisions that pertain to the X-factor. The Commission requires revised tariff review plans implementing the X-factor to be filed with the Commission to become effective on December 1, 2017. To ease the burden on the industry in connection with this filing, and because base period demand and the value of GDP–PI reflected in the price cap indices typically are not updated during a tariff year, the Commission permits incumbent LECs to use, in their filings implementing the 2.0 percent X-factor, the same base period demand and value of GDP–PI as in the July 1, 2017 annual filing.

382. *Price Cap Regulation.* The Commission applies price cap regulation in the form of Phase I pricing flexibility to DS1 and DS3 end user channel termination services provided by incumbent LECs in counties that we have determined are non-competitive. Requiring Phase I pricing will enable incumbent LECs, including those that may be small entities, to respond to any competition that develops in these markets through contract tariffs and volume and term discounts. In addition, incumbent LECs, including any small entities that previously received Phase II pricing flexibility in counties we now deem non-competitive will not be subject to ex ante rate regulation for end user channel terminations and other special access services in those

counties, and thus will avoid incurring the significant costs of trying to recreate price caps.

383. *Periodic Data Collection.* Related to the competitive market test proposal, the Commission also proposed a future periodic data collection to allow for market test updates for determining competitive and non-competitive areas. The periodic collection could have resulted in a significant reporting burden on small entities. Instead, the Commission adopts a process for updating the competitive market test every three years using the data from Form 477 that is already routinely filed by providers and thus entails no additional burden.

384. *Wholesale Pricing.* The Commission also minimized the impact of its rules on small entities by declining to adopt rules proposed by certain parties that would have required business data services providers to comply with detailed requirements regarding the pricing of their wholesale business data services.

385. *Forbearance.* To help level the playing field and promote regulatory parity for all business data services providers, the Commission extends the forbearance from section 203 of the Communications Act of 1934, as amended. This expands forbearance previously accorded certain price cap LECs to all price cap LECs, including those that may be small entities, in the provision of any packet-based business data service or circuit-based business data service above the DS3 bandwidth level. The Commission also forbears from the application of section 203 to DS1 and DS3 end user channel terminations, and certain other business data services, in competitive counties. These actions are also taken to promote competition and broadband deployment. To level the playing field among price cap LECs providing packet-based and optical transmission business data services, the Commission conforms the forbearance deemed granted to Verizon and its successors in interest to that provided other price cap carriers.

386. *Detariffing.* To minimize economic impact, the Commission provides a transition period to provide price cap incumbent LECs, including those that may be small entities, with sufficient time to adapt their business data services operations to a detariffing system. The Commission does not intend its actions to disturb existing contractual or other long-term arrangements, which must continue to be adhered to for the length of the contract, and the Commission adopted a grandfathering rules for such contracts.

D. Report to Congress

387. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

E. Data Quality Act

388. The Commission certifies that it has complied with the Office of Management and Budget Final Information Quality Bulletin for Peer Review, 70 FR 2664 (2005), and the Data Quality Act, Public Law 106–554 (2001), codified at 44 U.S.C. 3516 note, with regard to its reliance on influential scientific information in the Report and Order in WC Docket Nos. 16–143, 15–247, 05–25, and RM–10593.

IX. Ordering Clauses

389. *Accordingly, it is ordered* that, pursuant to sections 1, 2, 4(i)–(j), 10, 201(b), 202(a), 214, 303(r), 403, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i)–(j), 160, 201(b), 202(a), 214, 303(r), 403, 1302, this Report and Order is *adopted* and *shall be effective* sixty (60) days after publication in the **Federal Register**, except to the extent expressly addressed below.

390. *It is further ordered* that parts 0, 1, 61, 63, and 69 of the Commission's rules, 47 CFR parts 0, 1, 61, 63, and 69, *are amended,* and that such rule amendments *shall be effective* sixty (60) days after publication of this Report and Order in the **Federal Register**, except for sections 1.776, 61.45, 61.201, 61.203, and 69.701, 47 CFR 1.776, 61.45, 61.201, 61.203, 69.701, which contain information collections that require approval by the Office of Management and Budget under the Paperwork Reduction Act and *shall become effective* after announcement in the **Federal Register** of their approval by the Office of Management and Budget, and on the effective dates announced therein. The Federal Communications Commission will publish documents in the **Federal Register** announcing the effective dates.

391. *It is further ordered* that pursuant to sections 201(b) and 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), 202(a), price cap incumbent LECs *shall freeze* the tariffed rates for end-user channel terminations that any price cap incumbent LEC continues to tariff in newly deregulated counties for six (6) months after the effective date of this Report and Order.

392. *It is further ordered* that pursuant to section 61.45(b)(1)(iv) of the Commission's rules, 47 CFR 61.45(b)(1)(iv), price cap incumbent LECs must file with the Commission, revised tariffs and tariff review plans implementing the X-factor for end user channel terminations and other special access services subject to price cap regulation, to become effective on December 1, 2017.

393. *It is further ordered* that pursuant to section 1.115 of the Commission's rules, 47 CFR 1.115, the CenturyLink and USTelecom Applications for Review *are denied.*

394. *It is further ordered* that pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), the CenturyLink et al. Motion to Strike is *denied.*

395. *It is further ordered* that pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), the AT&T Motion Seeking Additional Information on Fiber Maps *is denied.*

396. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

397. *It is further ordered,* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

398. *It is further ordered* that, with regard to Docket Nos. 16–143, 05–25, and RM–10593, should no petitions for reconsideration or petitions for judicial review be timely filed, these proceedings *shall be terminated* and the dockets closed.

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Government publications, infants and children, Organization of functions (Government agencies), Postal Service, Privacy, Reporting and Recordkeeping requirements, Sunshine Act.

47 CFR Part 1

Administrative practice and procedure, Civil rights, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wages.

47 CFR Part 61 and 69

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 63

Cable television, Communications common carriers, Radio, Reporting and Recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 61, 63, and 69 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

§ 0.291 [Amended]

■ 2. Amend § 0.291 by removing and reserving paragraph (h).

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, 1451, and 1452.

§ 1.774 [Removed and Reserved]

■ 4. Remove and reserve § 1.774.

■ 5. Add § 1.776, before the center heading ''Contracts, Reports, and Requests Required to be Filed by Carriers,'' to read as follows:

§ 1.776 Pricing flexibility limited grandfathering.

Special access contract-based tariffs that were in effect on or before August 1, 2017 are grandfathered. Such contract-based tariffs may not be extended, renewed or revised, except that any extension or renewal expressly provided for by the contract-based tariff may be exercised pursuant to the terms thereof. During the period between August 1, 2017 and the deadline to institute mandatory detariffing under § 61.201(b), upon mutual agreement, parties to a grandfathered contract-based tariff may replace it at any time with a new contract-based tariff or with a new or amended contract that is not filed as a contract-based tariff.

PART 61—TARIFFS

■ 6. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 7. Amend § 61.45 by revising paragraph (b)(1)(iv) to read as follows:

§ 61.45 Adjustments to the PCI for Local Exchange Carriers.

* * * * *

(b) * * *

(1) * * *

(iv) For the special access basket specified in § 61.42(d)(5), the value of X shall be 2.0% beginning December 1, 2017, notwithstanding any language in § 61.45(b)(1)(i).

* * * * *

■ 8. Amend § 61.55 by revising paragraph (a) to read as follows:

§ 61.55 Contract-based tariffs.

(a) This section shall apply to price cap local exchange carriers permitted to offer contract-based tariffs under § 1.776 or § 69.805 of this chapter.

* * * * *

■ 9. Add subpart K, consisting of §§ 61.201 and 61.203, to read as follows:

Subpart K—Detariffing of Business Data Services

§ 61.201 Detariffing of price cap local exchange carriers.

(a) Price cap local exchange carriers shall remove from their interstate tariffs:

(1) Any packet-based business data service;

(2) Any circuit-based business data service above the DS3 bandwidth level;

(3) Transport services as defined in § 69.801 of this chapter;

(4) DS1 and DS3 end user channel terminations, and all other tariffed special access services, in any market deemed competitive as defined in § 69.801; and

(5) DS1 and DS3 end user channel terminations, and all other tariffed special access services, in any grandfathered market as defined in § 69.801 for which the price cap local exchange carrier was granted Phase II pricing flexibility prior to June 2017.

(b) The detariffing must be completed thirty-six months after August 1, 2017, but detariffing can take place at any time before the thirty-six months is completed.

§ 61.203 Detariffing of competitive local exchange carriers.

(a) Competitive local exchange carriers shall remove all business data services from their interstate tariffs.

(b) The detariffing must be completed thirty-six months August 1, 2017.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 10. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

§ 63.71 [Amended]

■ 11. Amend § 63.71 by removing and reserving paragraph (d).

PART 69—ACCESS CHARGES

■ 12. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 204, 218, 220, 254, 403.

■ 13. Revise § 69.701 to read as follows:

§ 69.701 Application of the rules in this subpart.

The rules in this subpart apply to all incumbent LECs subject to price cap regulation, as defined in § 61.3(bb) of this chapter, seeking pricing flexibility on the basis of the development of competition in parts of its service area for switched access services only.

■ 14. Add subpart I, consisting of §§ 69.801, 69.803, 69.805, 69.807, and 69.809, to read as follows:

Subpart I—Business Data Services

Sec.

Subpart I—Business Data Services

§ 69.801 Definitions.

(a) *Business data services.* The dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.

(b) *Competitive market test.* The competitive market test is defined in § 69.803.

(c) *County.* A county or county equivalent as defined in § 10.10 of this chapter. County-equivalents include parishes, boroughs, independent cities, census areas, the District of Columbia, and various entities in the territories.

(d) *End user channel termination.* A dedicated channel connecting a local exchange carrier end office and a customer premises, offered for purposes of carrying special access traffic.

(e) *Grandfathered market.* A county that does not satisfy the competitive market test set forth in § 69.803 for which a price cap local exchange carrier obtained Phase II relief pursuant to § 69.711(c).

(f) *Market deemed competitive.* A county that satisfies the competitive market test set forth in § 69.803.

(g) *Market deemed non-competitive.* A county that does not satisfy the competitive market test set forth in § 69.803.

(h) *Non-disclosure agreement.* A non-disclosure agreement is a contract, contractual provision, or tariff provision wherein a party agrees not to disclose certain information shared by the other party.

(i) *Special access data collection.* The special access data collection refers to the data and other information the Commission collected from business data services providers and purchasers pursuant to its December 18, 2012 Report and Order in WC Docket 05–25.

(j) *Transport* includes interoffice facilities, channel terminations between the serving wire center and point of presence, and all special access services that are described in § 69.114 other than end user channel terminations.

§ 69.803 Competitive market test.

(a) The competitive market test is used to determine which counties served by a price cap local exchange carrier, as defined in § 61.3(bb) of this chapter, are deemed competitive and therefore warrant relief from price cap regulation and detariffing of DS1 and DS3 end user channel terminations, and certain other business data services, sold by such carriers.

(b) *Initial test.* A county is deemed competitive in the initial competitive market test if:

(1) Either 50 percent of the locations with business data services demand within the county are within one half mile of a location served by a competitive provider based on data from the special access data collection, or 75 percent of the census blocks within the county are reported to have broadband connection availability by a cable operator based on Form 477 data as of December 2016. Lists of counties deemed competitive, non-competitive or grandfathered by the initial competitive market test are published on the Commission's Web site.

(2) The DS1 and DS3 end user channel terminations sold by price cap local exchange carriers in counties deemed competitive are no longer subject to price cap regulation and are detariffed according to § 61.201.

(c) *Subsequent tests.* The results of the initial competitive market test will be updated every three years following the effective date of the initial test.

(1) A county will be deemed competitive in a subsequent competitive market test if 75 percent of the census blocks within the county are reported to have broadband connection availability by a cable operator based on Form 477 data as of the date of the most recent collection.

(2) No later than three years following the effective date of the previous test, the Wireline Competition Bureau will conclude a subsequent test and will publish a revised list of counties deemed competitive at the conclusion of the test.

(3) A county deemed competitive in the competitive market test will retain its status in subsequent tests.

§ 69.805 Prohibition on certain non-disclosure agreement conditions.

(a) In markets deemed non-competitive, buyers and sellers of business data services shall not enter into a tariff, contract-based tariff, or commercial agreement, including but not limited to master service agreement, that contains a non-disclosure agreement as defined in § 69.801(g), that restricts or prohibits disclosure of information to the Commission, or requires a prior request or legal compulsion by the Commission to effect such disclosure.

(b) Confidential information subject to a protective order as defined in § 0.461 of this chapter in effect as of the effective date of a tariff, contract-based tariff, or commercial agreement must be submitted pursuant to the terms of that protective order or otherwise pursuant to the Commission's rules regarding submission of confidential data in §§ 0.457(d) and 0.459.

§ 69.807 Regulatory relief.

(a) Price cap local exchange carrier transport and end user channel terminations in markets deemed competitive and in grandfathered markets for a price cap carrier that was granted Phase II pricing flexibility prior to June 2017 are granted the following regulatory relief:

(1) Elimination of the rate structure requirements in subpart B of this part;

(2) Elimination of price cap regulation; and

(3) Elimination of tariffing requirements as specified in § 61.201 of this chapter.

(b) Price cap local exchange carrier end user channel terminations in markets deemed non-competitive are granted the following regulatory relief:

(1) Ability to offer volume and term discounts;

(2) Ability to enter into contract-based tariffs, provided that:

(i) Contract-based tariff services are made generally available to all similarly situated customers;

(ii) The price cap local exchange carrier excludes all contract-based tariff offerings from price cap regulation pursuant to § 61.42(f) of this chapter;

(3) Ability to file tariff revisions on at least one day's notice, notwithstanding the notice requirements for tariff filings specified in § 61.58 of this chapter.

(c) A price cap local exchange carrier that was granted Phase II pricing flexibility prior to June 2017 in a grandfathered market must retain its business data services rates at levels no higher than those in effect as of April 20, 2017, pending the detariffing of those services pursuant to § 61.201 of this chapter.

§ 69.809 Low-end adjustment mechanism.

(a) Any price cap local exchange carrier or any affiliate of any price cap local exchange carrier that had obtained Phase II pricing flexibility under § 69.709 or § 69.711 for any service in any MSA in its service region, or for the non-MSA portion of any study area in its service region, shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this

chapter in all or part of its service region.

(b) Any price cap local exchange carrier or any affiliate of any price cap local exchange carrier that exercises the regulatory relief pursuant to § 69.807 in any part of its service region shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this chapter in all or part of its service region.

(c) Any price cap local exchange carrier or any affiliate of any price cap local exchange carrier that exercises the option to use generally accepted accounting principles rather than the uniform system of accounts pursuant to § 32.11(g) of this chapter shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this chapter in all or part of its service region.

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